

14th March 1922]

APPENDIX.

[Vide answer to question No. 1365 asked by Mr. A. D. M. Bavotti Sahib at the meeting of the Legislative Council held on the 14th March 1922, page 2809 supra.]

Statement showing the number of Matriculates and School Final men appointed as sub-registrars during 1910-21.

Year.	Hindus.	Muhammads.	Christians.	Total.
1910	3	..	..	3
1911	2	..	..	2
1912	3*	..	..	3
1913	7†	4†	1	12
1914	3	1	..	4
1915	6	1	..	7
1916	1	1	..	2
1917	2	..	..	2
1918	2*	3	1†	6
1919	4	1	..	5
1920	17	9	2	28
1921	13	6*	3	22
Total ..	63	26	7	96

* Includes one unpassed exempted.

† Includes three unpassed exempted.

‡ Unpassed exempted.

Of these, 32 are clerks promoted as sub-registrars.

2. No Kammala Matriculate or School Final man was appointed as sub-registrar or probationary sub-registrar during the period 1910-21.

II

A BILL TO AMEND THE COURT FEES ACT, 1870.

The Council then resumed consideration of the Bill to amend the Court Fees Act, 1870.

SCHEDULE I, ARTICLE 2.

Amendment 27.

Rao Bahadur C. V. S. NARASIMHA RAJU:—"Sir, I move—

'27. In column 1 substitute the words "when the claim is of a small cause nature and does not exceed Rs. 500" for the words "in the exercise of small cause jurisdiction".'

"The effect of this amendment will be to extend the scope of article 2 of schedule I. As it is, the present Bill proposes to give the benefit of the old rate of court fees regarding suits that are instituted in courts of small causes. The scope of my amendment is that suits of small cause nature, whether they be instituted in courts of original jurisdiction or of small cause jurisdiction, shall have the benefit of this lower scale of court fees. From the information given at page 13 of the statistics of civil courts for the year 1920, the number of suits of the value of Rs. 500 and below instituted in all the courts except the village courts is about 330,000. Out of these, the Bill as it stands proposes to exclude 233,669 cases, i.e., small cause suits instituted in munsifs' courts, courts of special small causes and sudordinate judges' courts. At page 4, paragraph 10, it is given that the number of small cause suits instituted in munsifs' courts is 195,415. At page 4 at the bottom

[Mr. C. V. S. Narasimha Raju] [14th March 1922]

Schedule I, Article, 2—*cont.*

against special small cause courts, the figure is 13,415. Again, at page 5, paragraph 12, small cause suits instituted in subordinate judges' courts number 24,652. The total of these figures comes up to 233,669. Thus we see that the number of those suits below Rs. 500 and which do not come under small cause jurisdiction is about 96,000. All these suits will not be of small cause nature. My amendment proposes that a portion of these 96,000 suits also may come under the purview of article 2 as suits of small cause nature. From the statistics I am not able definitely to ascertain how many of these suits will be really suits of small cause nature. The reason of excluding suits of small cause nature from higher stamp duty is that they do not occupy much time of the court, and it is only owing to accident in some cases that the plaintiff has to pay heavier stamp duty, because the subordinate court is not established in the place or because the presiding district munsif has got jurisdiction to try small cause suits only up to the value of Rs. 100. As the principle is simply to give relief to smaller litigants—that principle has already been conceded in a way—I hope the Council will have no difficulty to accept this amendment. With these words I commend the amendment for the acceptance of the House."

MR. M. SURYANARAYANA PANTULU:—"Sir, I second the amendment. The reason why I rise to second this amendment is that I have also given notice of an amendment which has for its principle the same as the one now proposed by Mr. Narasimha Raju has. I submit, Sir, that very anomalous consequences follow the present arrangement. Article 2 of the present Bill gives the right of lesser court fee only in respect of suits instituted in small cause courts. We know that certain district munsifs are empowered to try suits of small cause nature only up to Rs. 100, and certain others up to Rs. 200, and where there are subordinate courts, they try suits of small cause nature up to Rs. 500. The anomaly that arises is in this way: there will be a differential treatment accorded to litigants in the same district as also in different districts. Take, for instance, the Vizagapatam district. We have got a Subordinate Judge's Court at Vizagapatam whose pecuniary jurisdiction in respect of small cause suits is Rs. 500, but that is confined only to the taluk of Vizagapatam. But so far as the District Munsif's Court of Vizagapatam is concerned it excludes the taluk of Vizagapatam. Suits above Rs. 500 from other places of this munsif will have to go before the District Munsif's Court, and the court fee payable will be $11\frac{1}{4}$ per cent as in article 1. But in so far as suits of the value of Rs. 500 and below are concerned and arising out of the taluk of Vizagapatam, they will be liable to a court fee of $7\frac{1}{2}$ per cent. Again, take the District Munsif's Court of Vizianagram which adjoins the district of Vizagapatam and is only 36 miles distant from it. It has jurisdiction up to Rs. 200, whereas the District Munsif's Court at Razam has got jurisdiction only up to Rs. 100.

"The result of such an arrangement will be that whereas some litigants in the same district will have their suits above Rs. 100 and below Rs. 200 tried as original suits, thereby being obliged to pay court fee at the enhanced rate of $11\frac{1}{4}$ per cent, some other litigants in the Vizagapatam and other munsifs' courts, where the munsifs are invested with extended small cause powers up to Rs. 200, will have their suits only above Rs. 200 classed as original suits for which additional fee has to be given. So far as Vizagapatam taluk is concerned on all suits to recover Rs. 500 and below, court fee of only $7\frac{1}{2}$ per cent has to be paid. It is only

11-15 a.m.

14th March 1922] [Mr. M. Suryanarayana Pantulu]

Schedule I, Article 2—*cont.*

suits above the value of Rs. 200 that will have to pay the enhanced rate of court fees. I have no doubt, Sir, there will be several other districts in the whole Presidency where such an anomaly occurs. I ask whether it is just and equitable that litigants who have to go to courts for small sums of money below Rs. 500 should be dealt with so differently in different taluks and in different districts. In the course of his observation yesterday, the Hon'ble the Law Member was telling us that in the case of suits which are instituted on the original side, the party will have the benefit of an appeal, but in the case of suits tried on the small cause side, he will not have the benefit of an appeal. I ask whether this luxury of an appeal should make all this difference. If there is an appeal, surely article 2 of the present Act does not cover cases of appeal also. If a party is not satisfied with the decision of a district munsif in a suit between Rs. 100 and Rs. 500, he prefers an appeal, and he will have to pay court fees according to the scale provided in article 1 and not according to the scale provided in article 2, namely, reduced court fees. It seems to me therefore, Sir, that the mere fact that an appeal is allowed ought not to make this difference, and suitors below Rs. 500 ought to have a concessional rate of $7\frac{1}{2}$ per cent allowed to them wherever their suits are instituted, whether they are in a small cause court or in a court of original jurisdiction or elsewhere."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" Sir, I explained at some length when we were discussing article 1 and the various amendments thereto as to the position taken by the Government with regard to these matters. If there is any logic at all as to the imposition of a court fee, it should depend upon the quantity of time which is taken by a particular court in the trial of a suit. I explained yesterday that if a suit which would be tried as a small cause in a particular court is tried in its ordinary jurisdiction in another court, the regular mode of taking evidence and various other matters which have to be adopted in the trial of an original suit has to be adopted in these suits also: the provision for retaining the original court fee with regard to cases tried on the small cause side is because of the fact that they are tried summarily with a memorandum of evidence taken by the judge and because there is no appeal from it. But with regard to other suits, as they are to be tried as regular suits—though the value of the suit may be Rs. 200 or Rs. 300—the same process of prolonged inquiry has to be undertaken by the courts. That is the reason, Sir, for levying the same kind of duty where the suit is tried on the regular side. My amendments have carried out that scheme in articles 1 and 2. I have explained my position already.

"There is one further point which has to be noted. If the amendment is left as it is, the result will be this: you have to pay on the same suit a higher court fee when there is an appeal and a lower court fee on the plaint. Article 2 relates to a plaint or written statement pleading a set-off or counter-claim presented to a court outside the Presidency town in the exercise of small cause jurisdiction. No provision for appeal was made here because there cannot be an appeal in this class of case. If we introduce an amendment such as the one proposed by the honourable member Mr. Narasimha Raju, or Mr. Suryanarayana Pantulu, the result of it will be that with regard to appeals you will still be governed by article 1. Such a state of things is anomalous, and logic requires that the Council which has voted for the retention of article 1 should not allow this amendment to go forward."

[14th March 1922]

Schedule I, Article 2—*cont.*

Mr. N. A. V. SOMASUNDARAM PILLAI :—"I rise to support the amendment before the House. It is a very reasonable amendment and it necessarily follows from the consideration which the Hon'ble the Law Member has had in respect of small cause suits which are generally filed by poor litigants. The present provision is that the same uniform court fee is payable for all such suits. Now a difference is sought to be made with regard to small cause suits and other suits. A new provision is now found with regard to suits filed in a court outside the presidency town in the exercise of small cause jurisdiction, and that is we have to pay the lower fee. As a matter of fact we see in some area there are no small cause courts which have got jurisdiction up to Rs. 500. As stated by the honourable member Mr. Suryanarayana Pantulu, there are courts where small cause suits can be instituted only up to Rs. 100 or Rs. 200 because the Government have not been in a position to establish small cause courts which can entertain suits up to Rs. 500. For the fault of the Government the litigant, under the present law as amended, is obliged to pay a higher court fee. There is absolutely no reason at all for compelling such a litigant in an area where there is no sub-court provided to pay a higher court fee with regard to suits which would ordinarily be filed in small cause courts. So far as the district of Tinnevely is concerned there is no such difficulty, because there is one sub-court at Tinnevely and another at Tuticorin and the whole area lies within the jurisdiction of either the one or the other."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—"I believe, Sir, there is a sub-court now in all the districts and more than one in some districts."

Mr. N. A. V. SOMASUNDARAM PILLAI :—"With regard to suits of a small cause nature, no doubt the party has to pay a lower court fee if they are filed in small cause courts. If the suit is filed and tried as a small cause one, there is no appeal; but in suits of small cause nature which are filed on the original side in a munsif's court, there is no doubt only one appeal lies and there is no second appeal. With regard to such suits if the plaintiff or the defendant want to prefer an appeal, by all means let him pay a higher court fee as provided in clause 1. But so far as suits in which the party has no other option than to file as original suits, then I fail to see any reason why he should be compelled to pay a higher court fee. For these reasons I beg to submit that the amendment is a very reasonable one, and that it will avoid the hardship which would otherwise be felt by poor litigants who have to file suits below Rs. 500 and who cannot find a court wherein they could file the suits as small causes."

Rao Bahadur T. A. RAMALINGA CHETTIYAR :—"Sir, I also rise to support the amendment that is proposed. An attempt is here made to avoid an anomaly that exists with regard to the present arrangements. What is now contained in article 2 is that on suits for money which are of a small cause nature which are filed in small cause courts, the same court fee has to be paid as at present. As the article stands at present there is this anomaly that court fee will be paid at different rates on the same sort of suits according to the courts in which they are filed, because by the act of the Government, parties are forced to take their suits to different courts. Now this amendment seeks to remove that anomaly and the amendment proposes that for the same nature of suits the same court fees ought to be levied,

14th March 1922]

[Mr. T. A. Ramalinga Chettiyar]

Schedule I, Article 2—*cont.*

whatever the form in which the client is obliged to bring his suit. I think that no more justifiable or equitable arrangement can be suggested. The Hon'ble the Law Member stated that there was a difficulty because the client will have to pay a lower court fee for suits than for appeals. There is one answer to that difficulty and that is there is already in article 2, plaint or written statement.

"Is there any serious objection for adding the 'memorandum of appeal' ? The mere fact that the words 'memorandum of appeal' are added would not give a right of appeal in suits where there is no such right. Now, for instance, if we have this, 'plaint or written statement . . . small cause jurisdiction or any memorandum of appeal thereon,' then I do not think this by itself will give a right of appeal in suits in which there is no right of appeal under the statute. That will not alter the position in any way. The suggestion was made by the honourable member Mr. N. A. V. Somasundaram Pillai, namely, that even if the fee for an appeal is going to be higher, that is no reason why a higher fee should be levied on plaints and written statements also. The object of the amendment is a very equitable one and it is only to remedy the anomaly that will come into existence, namely, that parties will be obliged to pay different rate of court fees on suits of the same nature on account of the fact that the Government have not provided for the same class of courts in all places, that the present amendment is now proposed. As has been pointed out, there are small cause courts with small cause jurisdiction only up to Rs. 50 and there suits of the value of more than Rs. 50 have to be filed on the original side. Again, there are other courts where the suits of the value of more than Rs. 100 and below Rs. 200 have to be filed as small cause suits. Again there are sub-courts which exercise small cause jurisdiction up to Rs. 500. It is an anomaly that different courts in different parts of the Presidency are invested with different kinds of jurisdiction over the same nature of suits. Again, there are some courts where a junior munsif is posted and he has got small cause jurisdiction only up to Rs. 50. Some two or three months later some senior munsif is posted there and he is invested with extended small cause powers. Is it because the Government chooses to post different persons that the client is to be obliged to pay a higher court fee ? I think that sort of anomaly ought to be avoided and I therefore strongly support the amendment."

Rao Bahadur C. V. S. NARASIMHA RAJU :—"It has been said that there will be an anomaly between suits instituted in the munsifs' courts and the appeals thereon regarding the stamp duty paid.

11-30 a.m. It has already been suggested by the seconder of the amendment that there is that difference. We should take into consideration the fact that out of 96,000 suits, appeals have been preferred to the sub-courts and district courts only in the case of 13,507 and the proportion is only one in seven. It may be remembered that the percentage of appeals that are successful is only 20 or 30 per cent. So the majority of such appeals are frivolous. The extra rate was defended on the ground of the difference in trial of such cases as original suits. But we have to take into consideration the fact that the real time that will be occupied in trying these suits is very small indeed. It is a matter of common experience that all suits below Rs. 500, though they are tried as original suits, do not occupy much of the time of the courts. Therefore, for these reasons I feel convinced that the amendment should not be thrown out: the anomaly will be very small; it will place the litigants of

[Mr. C. V. S. Narasimha Raju] [14th March 1922]

Schedule I, Article 2—*cont.*

the same nature on the same footing regarding the payment of court fees. I do hope the Council will accept the amendment proposed by me."

The Hon'ble Sir LIONEL DAVIDSON:—"If I am permitted, I want to say, Sir, that if the substance of the amendment is carried, some revision of the wording may be necessary."

The Hon'ble the PRESIDENT:—"I cannot now allow any change. Has the Hon'ble the Law Member anything to say in reply?"

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"Mr. President, I have explained my position in answer to the motion which was made. I now find that Mr. C. V. S. Narasimha Raju does not object to have a higher fee for appeal. During the course of the debate I pointed out that there is more than one sub-court in almost every district; and the question of being obliged to file a regular suit would not practically arise. It is not the case that litigants will be compelled to file suits in district munsifs' courts for want of a court exercising small cause jurisdiction up to Rs. 500. Something was said about the jurisdiction of new munsifs. That is just the reason why the privilege is given to have small causes tried as an original suit by these munsifs with a right of appeal to the superior court. It is only experienced judges that can safely be entrusted with small cause jurisdiction in suits of comparatively large value. It requires a good deal of experience to judge cases of this sort and that is why jurisdiction is limited in the case of new munsifs. It is for the protection of the litigant that this is done and to the extent the litigant gets protection he must pay.

"If, however, the House is willing to accept the amendment I will suggest a different wording. Instead of the present amendment I will suggest the following: 'in any suit of the nature cognizable by courts of small causes when the amount or value of the subject matter does not exceed Rs. 500.' I have followed the wording of the Civil Procedure Code. If somebody would propose it I shall accept. I do not want to propose it myself."

The Hon'ble the PRESIDENT:—"The proper course will be to put this amendment to vote first. If the Government want to alter the wording, they can propose that at a later stage. I cannot deal with conditional amendments at any stage."

On the motion of Mr. C. V. S. Narasimha Raju a poll was taken with the following result:—

Ayes.

- | | |
|---|---|
| 1. Rao Bahadur K. Gopalakrishnayya. | 19. Mr. P. Venkatasubba Rao. |
| 2. Mr. S. T. Shunmukham Pillai. | 20. Diwan Bahadur M. Ramachandra Rao Pantulu. |
| 3. Rao Bahadur T. A. Ramalinga Chettiyar. | 21. Diwan Bahadur M. Krishna Nayar. |
| 4. Mr. C. Ramalinga Reddi. | 22. Rao Bahadur A. S. Krishna Rao Pantulu. |
| 5. Mr. O. Tanikachala Chettiyar." | 23. Mr. S. Muttumanioka Achari. |
| 6. Mr. K. A. Kandaswami Kandar. | 24. Rao Bahadur C. V. S. Narasimha Raju. |
| 7. Mr. J. Kuppuswami. | 25. " Dr. C. B. Rama Rao. |
| 8. Mr. B. Muniswami Nayudu. | 26. Mr. A. Ranganatha Mudaliyar. |
| 9. Mr. A. T. Muttukumaraswami Chettiyar. | 27. Mr. T. Sivasankaram Pillai. |
| 10. Mr. V. Pakkiriswami Pillai. | 28. Mr. M. Suryanarayana Pantulu. |
| 11. Rao Bahadur A. Ramayya Punja. | 29. Mr. T. Arumainatha Pillai. |
| 12. Mr. W. P. A. Saundara Pandia Nadar. | 30. Rai Bahadur T. M. Narasimhaacharlu. |
| 13. Mr. N. A. V. Somasundaram Pillai. | 31. Ahmed Miran Sahib Bahadur. |
| 14. Mr. S. Somasundaram Pillai. | 32. Saiyid Diwan Abdul Razaq Sahib Bahadur. |
| 15. Mr. P. Subbarayan. | 33. Rao Sahib P. Venkatarangayya. |
| 16. Mr. V. C. Vellingiri Gounder. | |
| 17. Mr. K. C. Venkatachala Reddiyar. | |
| 18. Mr. C. Venkata Ranga Reddi. | |

14th March 1922]

Schedule I, Article 2—*cont.**Noes.*

- | | |
|-------------------------------------|---|
| 1. The Hon'ble Sir Lionel Davidson. | 9. Mr. F. J. Richards. |
| 2. „ Sir Charles Todhunter. | 10. Mr. C. W. E. Cotton. |
| 3. „ Khan Bahadur Muhammad | 11. Mr. R. Littlehales. |
| Habib-ul-lah Sahib Baha- | 12. Mr. E. Periyannayagam. |
| dur. | 13. Mr. R. K. Shanmukham Chettiyar. |
| 4. „ Mr. K. Srinivasa Ayyangar. | 14. Mr. A. Ramaswami Mudaliyar. |
| 5. „ Mr. P. Ramarayaningar. | 15. Mr. R. Appaswami Nayudu. |
| 6. „ Rai Bahadur K. Venkata | 16. Rao Bahadur V. Appaswami Vandayar. |
| Reddi Nayudu. | 17. Rao Bahadur P. C. Etirajulu Nayudu. |
| 7. „ Rao Bahadur A. P. Patro. | 18. Mr. T. E. Moir. |
| 8. Mr. C. P. Ramaswami Ayyar. | |

The amendment was carried, 33 having voted *for* and 18 *against*.

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“ Sir, I move the following amendment :—

Substitute ‘ in any suit of the nature cognizable by courts of small causes when the amount or value of the subject-matter does not exceed Rs. 500 ’ for the words ‘ when the claim is of a small cause nature and does not exceed Rs. 500 ’.”

Mr. C. P. RAMASWAMI AYYAR :—“ I second it.”

The motion was carried.

Amendments 28 and 29.

The following amendments were not moved and were therefore deemed to have been withdrawn :—

Mr. M. SURYANARAYANA PANTULU :—

“ 28. In column 1 omit the words after ‘ in ’ and substitute the words ‘ all claims of a nature cognizable by a court of small causes, whether filed in a court of small causes or not ’.”

Rao Bahadur K. GOPALAKRISHNAYYA :—

“ 29. Omit the whole article and re-number the subsequent articles.”

SCHEDULE I, ARTICLE 6.

Amendment 30.

Rao Bahadur A. S. KRISHNA RAO PANTULU then moved the following amendment standing against his name :—

“ 30. In column 3 substitute ‘ one rupee ’ for ‘ one rupee eight annas ’.”

In doing so, he said :—“ I have only to point out that in the Bill as originally introduced the fee for a ‘ copy or translation of a judgment or order not being or having the force of a decree ’ was only one rupee and the object of my present amendment is to restore the original figure. The Select Committee has raised it from one rupee to one rupee eight annas and has given no reason for the alteration. I have not been able to find any justification for the increased fee and I wish to suggest the restoration of the original figure.”

Rai Bahadur T. M. NARASIMHACHARLU :—“ I second it.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“ You will see in the original Act the proper fee was 4 annas, 8 annas and Re. 1.
11-45 a.m. We raised it by 50 per cent, that it is now 6 annas, 8 annas,

[Mr. K. Srinivasa Ayyangar]

[14th March 1922]

Schedule I, Article 6—*cont.*

Rs. 1-8-0. But this 8 annas was dropped out in the hurry of drafting and we have restored it. There is nothing wrong about it. I want to mention this, Sir, because my honourable friend the Finance Member is always looking at the Bihar Bill and envying that Province as compared with Madras. That is to some extent the fault of the Law Member here obstructing him, and I do not want the Council to obstruct him still more, seeing that we have framed the Bill on lines which would not hurt the litigant public more than is necessary. I make this appeal to the House because there are a number of items, and when we say Re. 1 some honourable member wants to reduce it by a few pies, and so on; Sir, it is necessary that there should be some finality in the matter."

Diwan Bahadur M. KRISHNAN NAYAR:—"Sir, the object of the Bill is to provide funds which are otherwise lacking. I do not think there is any harm in fixing the fee at Rs. 1-8-0 instead of Re. 1. The chances are that in many suits there will be no High Court judgments filed at all. So I do not think this will work as a hardship."

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"I do not press it."

Mr. T. SIVASANKARAM PILLAI:—"I rise to a point of order. I have given notice of an amendment which is numbered as 32 on the agenda. My amendment should properly come after No. 6 and not after No. 8 as it is put on the agenda. There is some mistake. 8-A ought to be 6-A."

The Hon'ble the PRESIDENT:—"Has the honourable member made the mistake or anybody else?"

Mr. T. SIVASANKARAM PILLAI:—"I myself made the mistake."

The Hon'ble the PRESIDENT:—"I shall deal with it in due course."

SCHEDULE I, ARTICLE 7.

Amendment 31.

Rao Bahadur K. GOPALAKRISHNAYYA:—"I beg to move the following amendment:—

'31. In column 3 for the words "*Four rupees*" against item (b) substitute "*Two rupees*".'

"Sir, it is stated that for every copy of a decree or order having the force of a decree, when such decree or order is passed by a High Court, the fee is Rs. 4. I want to move that this be changed to Rs. 2. Because there are certain cases where a decree of the High Court may be valued at Rs. 4 especially when the litigants are rich and the litigation is heavy. But, as we have seen, there will be some cases where revision petitions may be filed in the High Court. So if a copy of the order passed by the High Court in revision proceedings has to be obtained, parties have to pay Rs. 4 as the amendment now stands. I therefore move that it be changed to Rs. 2. In the cases I have narrated it will be rather difficult for the litigants to pay Rs. 4 when they seek to obtain copies of mere orders passed by the High Court. So Rs. 2 will be more reasonable than Rs. 4."

Mr. B. P. Devarajulu Nayudu seconded the amendment.

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"May I point out, Sir, that I have not raised the fee? It was so in the original Act. This motion means that we are to reduce a fee to something less than what it was in the

14th March 1922] [Mr. K. Srinivasa Ayyangar]

Schedule I, Article 7—*cont.*

original Act. The original fee was As. 8, Re. 1, Rs. 4. I am strongly opposed to the amendment. On the other hand, in Behar, they have raised every item by 50 per cent. This is another instance of my moderation."

Rao Bahadur K. GOPALAKRISHNAYYA:—"I should like to ask the Hon'ble the Law Member where exactly in the original Act Rs. 4 was provided."

The Hon'ble the Law Member then read out the portion referred to in the original Act, and the honourable member agreed to withdraw the motion.

The motion was, by leave withdrawn.

Amendment 32.

Mr. T. SIVASANKARAM PILLAI:—"I beg to move the following amendment:—

'32. *After No. 6 add the following:—"6-A. Copy of judgment under the Code of Criminal Procedure or of a Revenue Court—Eight annas."*

"Sir, there are certain kinds of documents which are declared liable to stamp duty when they are accepted as documentary evidence in courts of justice. These documents are referred to in articles 6 to 9 of the Bill. Copy or translation of a judgment or order, not being or having the force of a decree, is one kind of document. Copy of a decree or order, having the force of a decree, is another kind. Copy of any document liable to stamp duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn is the third kind. The fourth is copy of any revenue or judicial proceeding or order, not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any civil or criminal or revenue court or office, etc. Now from a perusal of these four articles it will be seen that copies of judgments of the courts of justice are treated differently from other documents. Article 6 refers to such judgment or order as is passed by any civil court other than a High Court, or by the presiding officer of any revenue court or office, or by any other judicial or executive authority. Then clause (a) refers to the money value of those decrees, evidently meaning that those judgments are confined to civil judgments. So there is another class of judgments. These are revenue court judgments as well as judgments of criminal courts. They do not come under article 6. On the other hand, in practice, they are made to come under article 9. And a criminal court judgment is liable to a stamp duty of As. 8 for every 360 words. By this amendment, I only propose to bring the judgments of the criminal courts and revenue courts in line with article 6. There must be some reason to treat these copies or translation of judgments differently from other documents. I presume the reason is that the judgment as such takes into view the whole transaction and gives a final adjudication. If this is the reason, I would also press the same thing in respect of judgments of criminal courts and the judgments of revenue courts as well. We always feel a difficulty in paying at the rate of As. 8 for every 360 words of a judgment. Suppose, for instance, there is a heavy criminal or sessions case in which a certain party has to file a copy of a voluminous judgment. It is unfair in such cases to tax a heavy court fees duty. In this view, I would submit that it is fair that we should treat these judgments of criminal courts under section 6, the fee being only 8 annas. For

[Mr. T. Sivasankaram Pillai] [14th March 1922]

Schedule I, Article 7—*cont.*

every judgment of a criminal court or revenue court a fee of 8 annas would be quite enough; and then they ought not to be made to come under article 9 which does not provide for such judgments. It only says, 'copy of any revenue or judicial proceeding' under which according to the present practice these criminal court judgments come."

Mr. T. ARUMAINATHA PILLAI :—" Sir, I rise to second the proposition. We find in revision or in appeals, so far as the civil suits are concerned, a stamp of the fixed value is asked to be attached to the decrees and judgments against which an appeal is presented either to the district court or the High Court. But in the case of a criminal appeal or criminal revision we are asked to pay at the rate of 8 annas for 360 words. I submit, Sir, there is no justification for this difference. At least so far as the civil court is concerned, in the civil appeals, it is the parties that go to courts and then when they appeal they are made to pay a little more. But so far as the criminal revisions or appeals are concerned, it is the Government's work which is being done in the law court, it is the Government that is the party, it is the King-Emperor that is the complainant; in such cases, I do not believe it will be right to ask the parties to pay at the rate of 8 annas per 360 words. We must secure some sort of uniformity at least in this respect where the Government is the opposite party. Therefore, I submit that As. 8 would be the proper amount leviable on these judgments."

Mr. T. SIVASANKARAM PILLAI :—" 6-A. would be the proper place."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" I have no objection at all, though I am doubtful whether it is going to benefit anybody, because section 371 of the Criminal Procedure Code allows the accused to get a copy free. As it is, it will mean that you have got to pay for that also. (Diwan Bahadur L. A. Govindaraghava Ayyar—No, no.) My honourable friend Mr. Govindaraghava Ayyar says 'no, no'. I have to accept his correction on trust."

Mr. T. SIVASANKARAM PILLAI :—" Section 371 of the Criminal Procedure Code applies only to copies of judgments which are applied for by the accused for the purpose of appeal only. Now, I refer to those classes of documents which a party in support of some contention of his, whether it is in civil court or Revenue Court, may have to rely upon in those cases. I say that these judgments may be treated separately and they be made liable to not more than As. 8 on the whole, not at the rate of 8 annas for 360 words. Section 371, Criminal Procedure Code, has no application because it refers to judgments applied for by the accused."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" I am willing to take it on trust, as I said. I do not think that the revenue courts need be considered specially because it is already provided in article 6 : 'When such judgment or order is passed by any civil court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other judicial or executive authority.'"

Mr. T. SIVASANKARAM PILLAI :—" The value is given as Rs. 50."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" I must object to it because it is the civil court that adjudicates unless it is restricted to a criminal court."

14th March 1922]

Schedule I, Article 7—*cont.*

Mr. T. SIVASANKARAM PILLAI :—“ I have no objection.”

The Hon'ble the PRESIDENT :—“ The motion will stand unless an amendment is put forward in the proper form.”

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—“ I beg to propose, Sir, that in the amendment the words ‘ or of a Revenue Court ’ be omitted.”

Diwan Bahadur L. A. Govindaraghava Ayyar seconded.

The Hon'ble the PRESIDENT :—“ The motion before the House is that in the amendment put forward by Mr. Sivasankaram Pillai the words ‘ or of a Revenue Court ’ be omitted.”

Mr. T. SIVASANKARAM PILLAI :—“ I accept the amendment, Sir.”

The amendment was put and carried.

The Hon'ble the PRESIDENT :—“ Then I will put the main motion ; it stands thus :—After number 6 *add* the following as 6-A :—

‘ Copy of judgment under the Code of Criminal Procedure—Eight annas. ’ ”

The motion was put and carried.

SCHEDULE I, ARTICLE 9.

Amendment 33.

12 noon.

Mr. T. SIVASANKARAM PILLAI :—“ The amendment that stands in my name runs as follows :—

‘ 33. *In the third column after the word “ ditto ” add “ subject to a maximum of rupees five.”* ’ ”

“ This again refers to article 9 of the Bill. Article of the Bill insists that a court fee of 8 annas ought to be paid for every 360 words of the copy of any proceeding, judicial or revenue, that is sought to be exhibited as a piece of documentary evidence. I beg to submit that this levy is rather heavy. I would certainly have no objection for the levying of 8 annas for every 360 words subject to a maximum of Rs. 5. That is the amendment which I propose. My object is that no documents ought to be made liable to a court fee of more than Rs. 5 when it is presented as an exhibit in a certain judicial proceeding. To levy more than Rs. 5 will be unduly heavy and I only pray that the Council will accept this amendment.”

Mr. T. ARUNAINATHA PILLAI :—“ I second it.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“ I must object to this, because I have made no changes whatsoever from the original Act. I see no reason now to make this change. In the original Act the fee prescribed for 360 words or fraction thereof is 8 annas. Now, my friend wants to impose a limitation of maximum of Rs. 5. I am unable to see why we should go on reducing this.”

Mr. T. SIVASANKARAM PILLAI :—“ So far as the raising of the fees is concerned, there is no other reason advanced by the Hon'ble the Law Member. My contention is that at the rate of 8 annas for 360 words, in cases where there are many voluminous documents the fees to be levied would come to tens of rupees. I want to relieve the litigants of this heavy charge and I think Rs. 5 will be quite enough.”

[14th March 1922]

Schedule I, Article 9—*cont.*]

On the motion of Mr. Sivasankaram Pillai a poll was taken with the following result:—

Ayes.

- | | |
|--|---|
| 1. Mr. N. A. V. Somasundaram Pillai. | 7. Mr. A. Ranganatha Mudaliyar. |
| 2. Diwan Bahadur M. Ramachandra Rao Pantulu. | 8. Mr. T. Sivasankaram Pillai. |
| 3. Rao Bahadur A. S. Krishna Rao Pantulu. | 9. Mr. M. Suryanarayana Pantulu. |
| 4. Rai Bahadur T. M. Narasimhaobharlu. | 10. Mr. T. Arumainatha Pillai. |
| 5. Rao Bahadur C. V. S. Narasimha Razu. | 11. Diwan Bahadur L. A. Govindaraghava Ayyar. |
| 6. Dr. C. B. Rama Rao. | |

Noes.

- | | |
|--|---|
| 1. The Hon'ble Sir Lionel Davidson. | 17. Mr. R. K. Shanmukham Chettiyar. |
| 2. " Sir Charles Toddhunter. | 18. Mr. A. Ramaswami Mudaliyar. |
| 3. " Khan Bahadur Muhammad Habib-ul-lah Sahib Bahadur. | 19. Mr. K. Adinarayana Reddi. |
| 4. " Mr. K. Srinivasa Ayyangar. | 20. Mr. R. Appaswami Nayudu. |
| 5. " Mr. P. Ramarayananar. | 21. Mr. B. P. Devarajulu Nayudu. |
| 6. " Rai Bahadur K. Venkata Reddi Nayudu. | 22. Mr. C. Ramalinga Reddi. |
| 7. Rao Bahadur A. P. Patro. | 23. Mr. O. Tanikachala Chettiyar. |
| 8. Mr. C. P. Ramaswami Ayyar. | 24. Mr. C. Natesa Mudaliyar. |
| 9. Mr. T. E. Moir. | 25. Mr. V. P. Pakkiriswami Pillai. |
| 10. Mr. M. E. Couchman. | 26. Mr. P. T. Rajan. |
| 11. Mr. N. F. Marjoribanks. | 27. Mr. W. P. A. Saundara Pandia Nadar. |
| 12. Mr. N. Macmichael. | 28. Mr. S. Somasundaram Pillai. |
| 13. Mr. F. J. Richards. | 29. Mr. P. Subbarayan. |
| 14. Mr. C. W. E. Cotton. | 30. Mr. S. Muttumanicka Aohari. |
| 15. Mr. R. Littlehales. | 31. Mr. M. Ratnaswami. |
| 16. Mr. E. Periyamayagam. | 32. Mr. R. T. Kesavulu Pillai. |
| | 33. Mr. G. Vandanam. |
| | 34. Rao Sahib P. Venkatarangayya. |
| | 35. Mr. A. M. MacDougall. |

The amendment was lost, 11 having voted *for* and 35 *against*.

SCHEDULE I, ARTICLE 11.

Amendment 34.

MR. O. TANIKACHALA CHETTIYAR:—"Sir, the amendment that I have to move is in regard to probate of a will or letters of administration. It runs as follows:—

'34. Omit in the central column the words "but does not exceed ten thousand rupees" and the words "when such amount or value exceeds ten thousand rupees" occurring after the words "when such amount or value exceeds five thousand rupees" and in the third column omit the words "five per centum on such amount or value."

"This amendment of mine is based upon a practice which is peculiar to the Presidency town as opposed to the mufassal. For instance, when the head of a family dies, leaving a life policy in an insurance company of Rs. 10,000 and also leaving house property worth 1½ or two lakhs of rupees, his heir is obliged under the law prevailing in Madras to apply for letters of administration, or if there is a will, for probate of a will, and that application must be accompanied by a statutory form of affidavit which mentions all kinds of conceivable property which he (the deceased) may have transmitted to the heir, together with all the accruals thereof up to the date of the application, so that the whole of his estate has to be declared and duty paid on it before letters of administration can be obtained in order to recover that insurance money of Rs. 10,000. When he applies for probate and secures

14th March 1922]

[Mr. O. Tanikachala Chettiyar]

Schedule I, Article 11—*cont.*

the estate, he has to pay away the amount that he gets from the insurance company by way of duty and he is obliged to do so for no other benefit than that of recovering the insurance money. Very often people begin insurance in their younger days, because after a certain time they become unfit for insurance and in the earlier stage of their life their resources may not permit of an insurance for more than five or ten thousand rupees. In later life they earn more and invest their earnings in immovable property. Letters of administration are required even for the purpose of recovering rent from a tenant. But if only for the purpose of recovering this insurance money a probate duty of 5 per cent has to be paid, I think this is a very great hardship. People may very well say that instead of recovering this money due from the insurance company by pledging their house property and raising a loan to be repaid afterwards, they may as well give up the insurance money. Very often some people invest some portion of their assets in Government promissory notes for about Rs. 5,000. For the purpose of obtaining letters of administration the heirs have to pay such a large sum of money that nothing will be left in the end and the result will be a loss. In these circumstances it is very desirable that this provision, which is already heavy, viz., that up to Rs. 10,000 we have to pay 6 per cent; between Rs. 10,000 and Rs. 50,000 it is $2\frac{1}{2}$ per cent and for sums over Rs. 50,000 it is 5 per cent, should be amended. Now what has got to be done is to pay a duty on sums from Rs. 5,000 to Rs. 10,000 at 3 per cent and from Rs. 10,000 to Rs. 15,000 at 5 per cent. So that it will be a great hardship and the object which the Government have in view in passing this amendment will be defeated; because, very many people will be tempted to give up the sums that they have to get rather than apply for letters of administration at such heavy cost and running the risk of selling their property without ultimately being benefited. Therefore, I move this amendment for the acceptance of the House."

MR. T. ARUMAINATHA PILLAI :—" I rise to second this motion, because I have also given notice of a similar motion. From experience I could vouch for all the statements made by Mr. Tanikachala Chettiyar. I know a client of mine for whom I had to obtain a probate of a will. All the immovable properties in the client's possession were worth Rs. 1,50,000. It was only to collect a small sum and various other monies that were due that we had to obtain a probate of the will and the amount in the shape of stamp duty on this account came up to something like Rs. 3,500. Unfortunately here we were not bound to take out a probate only for the portion that it was necessary for us to collect. Further, Succession Certificate Act is not applicable to this City. I therefore submit that it is a very great hardship to increase the whole thing like this and that the amendment is a very reasonable one. Though the Hon'ble the Law Member may say that this is the best form of taxation recommended by the highest authority and all that and that therefore the Government would not be committing any sin in taking away from the people as much money in this shape as possible, in spite of all that, I must say that the Bill as it is rather goes too far in inflicting hardship upon poor people."

THE HON'BLE MR. K. SRINIVASA AYYANGAR :—" Mr. President, I regret I have to oppose this. For I consider that a death duty or a probate duty

[Mr. K. Srinivasa Ayyangar]

[14th March 1922.]

Schedule I, Article 11—*cont.*

on inheritance is a very legitimate kind of duty. My friends have been saying that where there is a life insurance for two or three thousand rupees the claimant has to pay a duty on the whole estate.

"That is when you want a probate or letters of administration for the whole estate, not merely for the purpose of collecting a particular sum or sums. You wish to establish the representative character of the person, saying, that he is entitled to collect all dues and that he is the owner, subject of course to distribution among the beneficiaries. What ought really to be done is to make a probate or letters of administration compulsory in all cases, as it is compulsory in England and elsewhere. Because we do not want to impose that liability on all properties, because we have enabled courts in the mufassal to grant what is called a succession certificate for particular items of money which you want to collect, that is no reason whatsoever to excuse persons who are bound by the law—not by the Court Fees Act but by the Hindu Wills Act—to obtain probate or letters of administration, from paying an adequate duty upon the property which is vested in them by succession.

12-15 p.m. "I may mention in this connexion, Sir, that in England what is called the estate duty ranges from 1 per cent to 40 per cent of the value of the estate. For instance, for an amount between £ 100 and £ 500, it is 1 per cent; from £ 500 to £ 1,000, 2 per cent; from £ 1,000 to £ 5,000, it is 3 per cent; the scale of fees in England thus rises gradually, and if the estate is of the value of 2 million pounds, it is 40 per cent. That is the law in England. Here we have increased the duty to 5 per cent in the case of estates valued at over Rs. 10,000. The principle of taxation in regard to this matter is, the larger the value of the estate which passes on to survivors with the unearned increment, the larger the duty they should be required to pay. We have tried to adopt the English principle to a very small extent indeed in the matter of the duty which is payable. So, there is really no hardship, and there is no use in saying that when you have to recover a life insurance of Rs. 3,000 or Rs. 4,000, you have got to take out probate or letters of administration paying duty on the value of the whole estate and you are compelled to pay it at a percentage of the value. Some people may get the value of life insurance policies without paying it. For instance if the articles of association of a life insurance company say 'Unless you produce a probate or letters of administration, we do not pay,' then the claimants have to pay duty. In the mufassal duty has to be paid in the case of a particular item of debt for the purpose of collecting it. A person of proved character may be able to collect the debt without any difficulty or trouble. In these circumstances, I am unable to see any justification whatsoever for reducing the fee as proposed in this amendment."

Mr. N. A. V. SOMASUNDARAM PILLAI:—"Mr. President, I beg to support this amendment. Government are no doubt entitled to collect duties on probates or letters of administration taken out by heirs to deceased persons leaving property. Under the Court Fees Act as it stands at present, the duty payable on values above Rs. 1,000 up to Rs. 10,000 is 2 per cent; from Rs. 10,000 to Rs. 15,000 it is $2\frac{1}{2}$ per cent; and above Rs. 15,000 it is 3 per cent. Now under this Bill it is proposed that the duty payable on values above Rs. 1,000 and up to Rs. 5,000, should be 2 per cent; above Rs. 5,000 up to Rs. 10,000, it should be 3 per cent; and above Rs. 10,000, it is proposed to increase the duty to 5 per cent. The analogy drawn from the English

14th March 1922] [Mr. N. A. V. Somasundaram Pillai]

Schedule I, Article 11—*cont.*

law is not possible of application in this country. Here, so far as most of these cases are concerned, there is no great hardship for a person who is entitled to succeed to an estate. But if a company in which a person has insured his life, under its articles of association, requires the heir to produce a probate or letters of administration, or if a dishonest debtor with the intention of putting off the repayment of the debt puts the creditor to the necessity of producing a probate or letters of administration, in such cases the heirs are obliged to go in for probate or letters of administration. In such cases if we make them pay a portion of their inheritance, it would cause very great hardship. As the honourable mover has said, so far as the Presidency town is concerned there is no option given. There they are bound to obtain a probate or letters of administration. But so far as the mufassal is concerned, the option is given to obtain probate or letters of administration for a part of the estate for which it may be required. Even when we want to amend the Act for the purpose of raising money to meet the deficit, we can go to a certain extent only. Simply because a person dies leaving large property and the heirs come to succeed to it, that is no reason at all why the Government should go in for it and claim a large slice out of it on the ground that it gives a status to the heirs. I think the amendment proposed by the honourable mover is a reasonable and necessary one in the interests of persons, poor and rich, and also in the interests of the Government itself. I therefore beg to support the amendment."

The Hon'ble Sir CHARLES FODDINGTON:—"Sir, I feel bound in the interests of the treasury to oppose this plea on behalf of the poor rich man. I would submit that the arguments which we have just listened to from the last speaker are contrary to all canons of taxation. It is generally agreed, I think, in all countries that a death duty is one of the most proper duties. It does not hurt any one at the time; it affects property which is passing from a dead man to a living man; and it is graduated generally upwards so that the richer the estate the larger the amount of the duty. I think it is generally accepted that it is one of the best forms of taxation, and in countries where it is in force it is frequently met without any great hardship by life assurance for an amount equal to the duty. I quite agree that there is a hardship in the case of the inhabitants of the Presidency town in that they are liable to take out probate whereas the persons in the mufassal can escape. I certainly hope that steps will very shortly be taken to remove this hardship by making probate compulsory for the whole Presidency, as in the case of the Presidency of Bengal. I once again appeal to the Council on the ground that we need money very badly and this is the very best form of taxation, to oppose this amendment."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU:—"Sir, I should like to point out to the Hon'ble the Finance Member that the scale adopted in the English Act is a sufficient indication for us in regard to this amendment. Let us take the scale of duties in England at their equivalent value in Indian currency. For an estate valued at £1,000, the equivalent of which in Indian money would be Rs. 15,000, the duty chargeable is 2 per cent. It is proposed in this Bill that all estates of the value of over Rs. 10,000 should be charged 5 per cent. I ask my honourable friend as a student of economics, supposing a man has got a fortune of Rs. 10,000 or has inherited such a fortune, whether he can be asked to pay as interest on the

[Mr. M. Ramachandra Rao Pantulu] [14th March 1928]

Schedule I, Article 11—*cont.*

amount, Rs. 1,500 to Government. Does he want to treat it as what I may call the consumable income of persons with small fortunes? I have absolutely no objection to adopting the scale that obtains in England. I am certain that there are very few persons here who have got fortunes of the value of 2 millions or $1\frac{1}{2}$ millions. I would adopt the whole scale entirely, substituting the Indian equivalent of English currency. If the scale is thus adopted, estates of the value of Rs. 1,500 up to Rs. 7,500 would be subject to a duty of 1 per cent. I have absolutely no objection to that. Then for estates worth between Rs. 7,500 and Rs. 15,000, the duty would be 2 per cent. In this case also I have absolutely no objection. For estates worth above Rs. 15,000 up to Rs. 75,000, the duty would be 3 per cent. Certainly nobody in this Council would object to this proposal. What we certainly say is that persons should not be hard hit under this idea that everybody who inherits a fortune should be taxed. There must be some limit fixed, so that persons with small fortunes are not hard hit. And if the Hon'ble the Finance Member considers what the equivalent of Rs. 10,000 would be in English money and what would be the rate of duty under the English Act, he would be in a position to see whether it is reasonable to take away 5 per cent of the value of an estate. We have no objection to the principle of death duties at all. The Hon'ble the Finance Member seems to have misunderstood my honourable friend Mr. Somasundaram Pillai. He never objected to duties at all, but only to the rate at which they are proposed to be levied. If my honourable friend the Finance Member intends to extend this beneficial proposal to the mufassal also, I would sound a note of warning that this Council should not accept a scale which takes away from the capital of a person who inherits a fortune, $1/20$ of that fortune. It seems to me to be very hard and after all Rs. 10,000 is a big fortune to a man of ordinary family and to take away $1/20$ thereof as death duty, is really very hard. Therefore, Sir, we shall have absolutely no objection, if my honourable friend would propose these death duties on the equivalent of rupee currency. It cannot be said that 5 per cent is charged in England on estates worth £10,000 (which comes to Rs. 1,50,000 in Indian currency) and, therefore, that rate is put upon Rs. 10,000 also. Strictly speaking it means that this 5 per cent duty is levied in England on estates worth Rs. 1,50,000 and above. I am therefore very glad that my honourable friend the Law Member has quoted the English law and precedent, which entirely are against him."

The Hon'ble Sir CHARLES TODHUNTER:—"May I explain, Sir, that the present amendment only affects sums above Rs. 10,000? Therefore, it is a proposal to tax the rich man and not the poor one."

Rao Bahadur K. GOPALAKRISHNAYYA:—"Sir, I rise to support the amendment. There seems to be considerable misapprehension on the part of some members of this House that the case is strengthened by quoting an analogy of the English law. English law is quite different from Hindu law. Under the Mitakshara law, the son of a father is by virtue of his birth entitled to inherit the property left by his father, whereas in England the son is to depend upon the will of the father and I think it is but right that the death duties in England should be heavy because the son either expectedly or unexpectedly gets some properties of his father to which by law or by his birth he is not entitled. But in India the son, by virtue of

14th March 1922]

[Mr. K. Gopalakrishnayya]

Schedule I, Article 11—*cont.*

his birth, is entitled to inherit the property of his father, and it is only in extraneous cases that succession certificates or letters of administration are required to be applied for, for the purpose of recovering the debts due to the father from others. So, the comparison is odious and figures are generally misleading. I think for these reasons that the House should accord its support to the amendment moved by my honourable friend Mr. O. Tanikachala Chettiyar."

Mr. W. VIJAYARAGHAVA MUDALIYAR:—"Mr. President, I beg leave to support this amendment. Sir, no doubt, in the first place the Bill has been conceived for the purpose of raising money to meet the deficit in this Presidency, and the most equitable way of getting it would be to take more money from those who can afford to pay, for instance those who without cause or provocation rush into court. In such cases the increase of court fees would check the inordinate desire on the part of some people to spend large sums in litigation by way of court fees, pleaders' fees, etc. But in the case of these poor people now under discussion, the case stands on a different footing altogether. These men go to court, not with any desire to spend some extra money, to ease themselves of anything by giving it to the lawyer and enjoying the pleasure of litigation and to have the consolation of making their neighbours blush.

12-30 p.m. "But here in most cases it so happens that many families are left in the world with some landed property and some amount of insurance money. It also very often happens that a man who has insured his life for a large amount dies leaving also a large estate. When it becomes necessary for the family to clear the debts with the help of this insurance money a tedious procedure has to be adopted and they are very much handicapped. As pointed out by my honourable friend Mr. Ramachandra Rao, there can be no objection whatever if the English rates are adopted. It has very often been said that the rate of taxation in England is very much heavier than in India. It is also well known that in England the capital is well used and improved by all means and unfortunately owing to our social customs and ideas of economy and ideas of living, people here are under a great disadvantage and the people invest the money only in jewels, etc. There is not therefore much scope in India for improving the amount. Further, the ideas of family life are quite different here and a man earning a small amount has got to maintain a number of dependents. Taking into consideration all these things to levy a fee on probate and letters of administration on estates is itself a hard thing in India and to import a comparison between the English rates and the Indian rates is not desirable especially when English rates are very high. Therefore in this case at least, I think, the old rates ought not to be disturbed and I therefore strongly support the amendment."

Mr. O. TANIKACHALA CHETTIYAR:—"Sir, I have listened to the Hon'ble the Law Member and I have not found anything to induce me to alter my view. He has instituted a comparison between Madras and England where the conditions are so very different. I pointed out the hardship by a comparison between mufassal stations and Madras. Whereas in Madras we have to pay on anything and everything, in a mufassal station you have only to pay on what is to be recovered. As my friend Mr. Ramachandra Rao contended, things are not so very bad as represented by the

[Mr. O. Tanikachala Chettiya] [14th March 1929]

Schedule I, Article 11—*cont.*

Hon'ble the Law Member and the hon'ble the Finance Member. As has been pointed out while we are in this country under the existing law raising 3 per cent from estates worth Rs. 50,000, the 3 per cent in England comes into operation only when the estate is worth Rs. 75,000. It is only right that we should be much behind England in this as in other matters. As to the threat of bringing in a law of that nature, I dare say the time will come when we may have to consider it. But at the same time we shall consider the conditions obtaining in England and India. But now in the absence of any revised scales with English rates, I think, we had better accept this amendment; and if necessary we shall bring in another scale later on."

The Hon'ble Sir LIONEL DAVIDSON:—"Sir, there has been reference made to the question of comparisons between English and Indian rates and also the question of the relative immunity of the rich and the poor man. I should like the House to realize that the effect of this amendment is to safeguard the richer classes. I do not think that that has been fully realized. As to comparisons with England, I cannot help thinking that the immensely greater rates leviable in England on the richer classes have been overlooked. I do not propose to enter into the question of the comparative value of English incomes and Indian incomes. But obviously an income in pounds sterling under English conditions cannot be compared off-hand with an income of rupees in India. The outstanding fact is if this amendment is passed it will have the effect of restricting the enhancement from 2 per cent to 3 per cent to cases where the value of the estate exceeds Rs. 5,000. It will impose no further increase in the case of estates worth lakhs and lakhs. And while the object of the Government in bringing forward this piece of legislation was to get as much additional revenue as they could without imposing crushing conditions, I observe that during the course of the debate we have actually had more than one instance of proposals to take advantage of the Bill in order to reduce rates of taxation, which have existed since 1870."

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"If you want to compare the English table with ours by substituting rupees for pounds, you will find in England they pay a percentage on incomes below one thousand whereas here you are not taxed at all. That is the only fair way of judging the liability to pay tax on unearned property. Then for estates between 1,000 and 5,000 you have to pay 3 per cent—that is the same as here. Between 5,000 and 10,000 there is a 4 per cent tax. And so on there is a graduated scale. Here we have a uniform rate above 10,000 while in England beyond 10,000 there is a varying rates ranging from 5 up to 40 per cent. So that with regard to higher incomes you have to pay in England from half to a third of the income as estate duty and in India you pay only one-twentieth."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR:—"Sir, the Hon'ble the Law Member's observations call for a reply. If honourable members will look into the present proposal, it is that incomes up to Rs. 1,000 ought to be excused. The proper way of calculating therefore would be to take £100 in England as equivalent Rs. 1,000 here. And proceeding thus, it will be found that the incidence of taxation is very much higher than that

14th March 1922] [Mr. L. A. Govindaraghava Ayyar]

Schedule I, Article 11--cont.

under the English duties. As a matter of fact it will be remembered by the House that in the Act of 1919, at a time when the British Parliament was in need of great funds and in respect of people of whom it may be said to use the language of the Hon'ble Sir Lionel Davidson, that they are people with immense incomes, it was considered that a graduated scale should be adopted. As a matter of fact it will be found that the rates here work very much higher. I will take only one instance: it will be found that estates between a thousand pounds and five thousand pounds have to pay only 3 per cent. This, according to our scale, will be estates which have an income between Rs. 10,000 and Rs. 50,000; these would have to pay only 3 per cent according to the English scale, whereas the present proposal is to make them pay 5 per cent. Again estates whose value is between Rs. 50,000 and one lakh would have to pay 4 per cent according to the English scale. The present suggestion is to make them pay 5 per cent. If the graduated system enforced in England which *primâ facie* appears to be good is adopted here it will not press so hard on our comparatively poor set of people."

A poll was taken with the following result:—

Ayes.

- | | |
|--|--|
| 1. Mr. K. Adinarayana Reddi. | 24. Diwan Bahadur M. Ramachandra Rao Pantulu. |
| 2. Mr. R. Appaswami Nayudu. | 25. " L. A. Govindaraghava Ayyar. |
| 3. Mr. B. P. Devarajulu Nayudu. | 26. " M. Krishnan Nayar |
| 4. Rao Bahadur K. Gopalakrishnayya. | 27. Rao Bahadur A. S. Krishna Rao Pantulu. |
| 5. Mr. S. T. Shanmukham Pillai. | 28. Mr. C. V. Venkataramana Ayyangar. |
| 6. Rao Bahadur T. A. Ramalinga Chettiyar. | 29. Rai Bahadur T. M. Nasimhachariu. |
| 7. Mr. C. Ramalinga Reddi. | 30. Rao Bahadur Dr. C. B. Rama Rao. |
| 8. Mr. O. Tanikachala Chettiyar. | 31. Mr. A. Ranganatha Mudaliyar. |
| 9. Mr. W. Vijayaraghava Mudaliyar. | 32. Mr. M. Sanyanarayana Pantulu. |
| 10. Mr. B. Muniswami Nayudu. | 33. Mr. T. Arumainatha Pillai. |
| 11. Mr. A. T. Muttukumaraswami Chettiyar. | 34. Rai Sahib E. M. Mascarenhas. |
| 12. Mr. A. Narayanaswami Reddi. | 35. Mr. Abbas Ali Khan Sahib Bahadur. |
| 13. Mr. C. Natesa Mudaliyar. | 36. Mr. Ahmad Miran Sahib Bahadur. |
| 14. Mr. V. Pakkiriswami Pillai. | 37. Mr. Saiyid Muhammad Padsha Sahib Bahadur. |
| 15. Mr. P. T. Rajan. | 38. Khan Sahib Muhammad Abdur Rahman Khan Sahib Bahadur. |
| 16. Rao Bahadur A. Ramayya Punja. | 39. Mr. Saiyid Diwan Abdul Razaq Sahib Bahadur. |
| 17. Mr. W. P. A. Saundara Pandia Nadar. | 40. Mr. R. T. Kesavulu Pillai. |
| 18. Mr. K. Sitarama Reddiyar. | 41. Mr. G. Vandanam. |
| 19. Mr. T. Somasundaram Mudaliyar. | 42. Rao Sahib P. Venkatarangayya. |
| 20. Mr. N. A. V. Somasundaram Pillai. | |
| 21. Mr. P. Subbarayan. | |
| 22. Mr. T. C. Tangavelu Pillai. | |
| 23. Diwan Bahadur R. Venkataratnam Nayudu. | |

Noes.

- | | |
|--|-------------------------------------|
| 1. The Hon'ble Sir Lionel Davidson. | 8. Mr. C. P. Ramaswami Ayyar. |
| 2. " Sir Charles Todhunter. | 9. Mr. T. E. Moir. |
| 3. " Khan Bahadur Muhammad Habib-ul-Jah Sahib Bahadur. | 10. Mr. F. J. Richards. |
| 4. " Mr. K. Srinivasa Ayyangar. | 11. Mr. C. W. E. Cotton. |
| 5. " Mr. P. Ramarayaningar. | 12. Mr. R. Littlebailes. |
| 6. " Rai Bahadur K. Venkata Reddi Nayudu. | 13. Mr. E. Periyanaayagam. |
| 7. " Rao Bahadur A. P. Patro. | 14. Mr. R. K. Shanmukham Chettiyar. |
| | 15. Mr. A. Ramaswami Mudaliyar. |
| | 16. Mr. S. Somasundaram Pillai. |
| | 17. Mr. A. M. MacDougall. |

The amendment was declared carried, 42 having voted *for* and 17 *against*.

Schedule I, Article 11—cont.

[14th March 1922]

Amendments 35, 36 and 37.

The Hon'ble the PRESIDENT :—“ In view of the decision of the House on amendment 34, amendments 35, 36 and 37 go out.”

12-45 p.m.

The following amendments were therefore not moved :—

Mr. T. ARUMAINATHA PILLAI :—

‘ 35. (i) *In column 2 omit the words “ but does not exceed ten thousand rupees ” in the second clause.*

(ii) *In the same column omit the following clause :—“ When such amount or value exceeds ten thousand rupees.”*

(iii) *In column 3 omit “ Five per centum on such amount or value.”*

Mr. N. A. V. SOMASUNDARAM PILLAI :—

‘ 36. (i) *In the second entry in column 2 omit the words “ but does not exceed ten thousand rupees.”*

(ii) *In columns 2 and 3 omit the following words :—*

“ When such amount or value exceeds ten thousand rupees. Five per centum on such amount or value.”

Rao Bahadur K. GOPALAKRISHNAYYA :—

‘ 37. (i) *In column 2, after the word “ rupees ” in the tenth line add the words “ but does not exceed twenty thousand rupees.”*

(ii) *In column 3, paragraph 3, for the word “ five ” substitute “ four.”*

(iii) *In column 2, after paragraph 3, insert the following new paragraph :—*

“ When such amount or value exceeds twenty thousand rupees.”

(iv) *In column 3, after paragraph 3, insert the following new paragraph :—*

“ Five per centum on such amount or value.”

SCHEDULE I, ARTICLES 11 AND 12.

Amendment 38.

The following amendment standing in the name of Mr. P. Siva Rao was not moved, the honourable member not being in his place, and was therefore deemed to have been withdrawn :—

Mr. P. SIVA RAO :—

‘ 38. *Retain the “ proper fee ” mentioned in the third column of the principal Act and delete the amendments proposed in the Bill.*

SCHEDULE I, ARTICLE 12.

Amendment 39.

Mr. N. A. V. SOMASUNDARAM PILLAI :—“ Mr. President, I beg to move that in regard to clause 12 which relates to certificates under the Succession Certificate Act, 1889 :—

‘ 39. (i) *In the first entry in column 2 insert between “ Act ” and “ does ” the words “ exceeds one thousand rupees, but ”*

(ii) *In the second entry in the same column omit the words “ but does not exceed ten thousand rupees.”*

14th March 1922] [Mr. N. A. V. Somasundaram Pillai]

Schedule I, Article 12—*cont.*

(iii) *In columns 2 and 3 omit the following words:—*

“When such amount or value exceeds ten thousand rupees.

Five per centum on such amount or value and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.”

“In my view, there should be only two clauses in column 2. I submit that with regard to amounts below Rs. 1,000 there ought to be no fee collected, and with regard to amounts above Rs. 10,000 there ought to be the same three per centum as in the case of probate of a will or letters of administration. Mr. President, you will find that in the original bill that was drafted and submitted to the Select Committee this provision was added that in so far as the amount was below Rs. 1,000 there was no fee to be collected. The original Bill ran thus: ‘when the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, but does not exceed five thousand rupees.’ But when the Bill was passed by the Select Committee they amended it saying that even with regard to amounts below Rs. 1,000 they wanted to provide for the same duty. So far as the probate of a will or letters of administration is concerned, there is an exception made in regard to amounts below Rs. 1,000. I submit that similarly with regard to the certificate also under the Succession Certificate Act, no fee should be collected when the amount or value is less than Rs. 1,000.

“With regard to the other portion of the motion, relating to the amount or value exceeding Rs. 10,000, I think the same reason that has been applied and adopted with regard to the probate or letters of administration, i.e., when the amount or value exceeds Rs. 5,000, three per centum apply to the succession certificate also and I therefore move for the deletion of those words in the second entry and in columns 2 and 3. You will find that all the remarks made by honourable members in regard to the probate or letters of administration will apply with equal force to certificates so far as five thousand rupees limit is concerned. There is no need at all for collecting such a large percentage as $7\frac{1}{2}$ per centum on the value when it exceeds Rs. 10,000. With these words, I beg to commend this amendment for the acceptance of the House.”

Mr. T. Somasundara Mudaliyar seconded the motion.

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“May I ask you to put the first amendment, i.e., 39 (i) separately, because the latter two amendments may have to be considered with reference to the decision of the House with regard to the probate or letters of administration. This amendment stands apart, because it relates to a reduction of the duty from what it was in the original Act. May I just explain how the position stands?”

The Hon'ble the PRESIDENT :—“I quite understand the need for putting it separately. But let the honourable member finish what he has to say.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“I am unable to see why we should exempt properties below Rs. 1,000 from paying duty on succession certificates. On probates or letters of administration you have to pay duty on the whole estate, but with regard to the succession certificate you may

[Mr. K. Srinivasa Ayyangar]

[14th March 1922.]

Schedule I, Article 12—*cont.*

take a certificate in respect of a particular debt. That was why this distinction was made between succession certificates and probate or letters of administration. A man may be possessed of enormous wealth in land and only a small amount of debt, and all that will be necessary is to pay duty on the particular debt for which a succession certificate is required. I therefore submit to the House that the attempt to reduce the duty which has been in existence is without any justification whatsoever.

“With regard to the rates, after what the House has accepted in regard to probate and letters of administration, I am not insisting on heavier duty, especially when there is the right to levy a higher rate for extension of the certificate.”

The Hon'ble the PRESIDENT :—“It will probably be convenient to indicate to the House that I shall put, as suggested by the Hon'ble the Law Member, amendment 39 (i) first to the vote, and 39 (ii) and (iii) afterwards. That is my intention. Has the honourable member Mr. Somasundaram Pillai anything to say?”

Mr. N. A. V. SOMASUNDARAM PILLAI :—“After having heard the Hon'ble the Law Member's observation, I shall withdraw with the permission of the Council the first amendment, i.e., 39 (i).”

Amendment 39 (i) was then by leave withdrawn.

The remaining portion of amendment 39 was then put to the House and the motion was carried.

Amendment 40.

The following amendments were not then moved and were therefore deemed to have been withdrawn :—

Rao Bahadur K. GOPALAKRISHNAYYA :—

40. (i) *In column 2, after the word ‘rupees’ occurring in third paragraph, add the following words ‘but does not exceed twenty thousand rupees’.*

(ii) *In column 3, paragraph 3, for the words ‘five’ and ‘seven and a half’ substitute ‘four’ and ‘six’ respectively.*

(iii) *In column 2, after the third paragraph, add the following new paragraph :—*

‘When such amount or value exceeds twenty thousand rupees.’

(iv) *In column 3 add the following new paragraph opposite to the above new paragraph :—*

‘Six per centum on such amount or value; and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.’”

ANNEXURE (A) TO SCHEDULE I.

Amendment 41.

Rao Bahadur K. GOPALAKRISHNAYYA :—

‘41. In line 3 after the words ‘of suits’ add the words ‘in courts outside the Presidency town’ and omit the fourth line beginning with ‘(a)’.’

Amendment 42.

Mr. M. SURYANARAYANA PANTULU then moved—

42. (i) *Omit the word ‘Courts’.*

(ii) *After the word ‘In’ and before the word ‘outside’ insert ‘suits of a nature cognizable by a court of small causes’ and omit all the words after the word ‘town’.*

[14th March 1922] [Mr. M. Suryanarayana Pantulu]

Annexure (A) to Schedule I—*cont.*

In doing so, he said:—"The amendment that I propose to move is consequent upon the acceptance by the House of the motion for amendment in regard to clause 2, schedule 1. Clause 2, schedule 1, has been amended by adding the words 'all claims of a nature cognizable by a court of small causes whether filed in a court of small causes or not', and in annexure A we find 'in courts outside the Presidency town in the exercise of small cause jurisdiction'. These words require to be deleted consequent on the acceptance of that amendment and according to my amendment it will be 'In suits of a nature cognizable by a court of small causes outside the Presidency town'. That is the reason why I propose this amendment."

Mr. T. Arumainatha Pillai seconded the motion.

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"I do not object to the amendment, for it is merely consequential, though I do not like the language. If you will allow me, Sir, I wish to say that there are many details I have to see through. I do not propose that this Bill be passed into law to-day. I propose with your permission, Sir, to move the same to-morrow. If the House will allow me, I shall carry out all the consequential amendments which have to be made in the Bill. I therefore suggest that the honourable mover be pleased to withdraw his amendment."

Mr. M. SURYANARAYANA PANTULU:—"I beg leave to withdraw my motion."

The motion was then by leave withdrawn.

Amendment 43.

The following amendment was not moved as the honourable mover was absent :—

Mr. T. C. SRINIVASA AYYANGAR :—

43. *Add the words "and in other civil courts when they entertain suits of a small cause nature, as ordinary suits" after the words "small cause jurisdiction."*

ANNEXURE (B) TO SCHEDULE I.

Amendment 44.

The following amendment was not moved and was therefore deemed to have been withdrawn :—

Rao Bahadur K. GOPALAKRISHNAYYA :—

44. (i) *Omit the contents of the whole of ninth page.*

(ii) *Pages 10, 11 and 12.—Omit lines 3 and 4 beginning with '(b)' etc.*

(iii) *In column 3 alter the amounts of proper fee in accordance with the amendments to No. 1 proposed above.*

(iv) *In the last line of page 12 for the words 'thirty rupees' substitute the words 'fifty rupees'.*

Amendment 45.

The following amendment standing in the name of Mr. N. A. V. Soma-sundaram Pillai was not also moved :—

45. *Add the following at the end :—*

'Provided that the maximum fee shall not exceed five thousand rupees.'

[14th March 1929]

SCHEDULE II, ARTICLE 1.

Amendment 46.

The following amendment 46 (i) was not moved and was therefore deemed to have been withdrawn :—

Rao Bahadur K. GOPALAKRISHNAYYA :—

46. (i) *In column 3 for the whole paragraph beginning with ' In the case of etc.' substitute ' Eight annas '.*

Rao Bahadur K. GOPALAKRISHNAYYA :—" I beg to move the second portion of the amendment—

46. (ii) *In column 3 for the words ' One rupee eight annas ' substitute ' One rupee '.*

" In the second class of fixed rates a fee of one rupee eight annas is fixed on an application or petition when presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act. I move, Sir, that only a rupee shall be charged for such petitions. For, petitions of this sort are usually presented by even the poor people and it is but right that the tax should not press heavily upon them."

Mr. R. APPASWAMI NAYUDU :—" I second the motion."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" Mr. President, as I said at the outset, we are trying to improve our revenues by raising 50 per cent over the fees already in existence wherever we could do so without undue hardship. This is just such a case where there cannot be any hardship whatsoever. With regard to the other clauses as will be found here we have not indiscriminately raised the fee but we have left many of them alone because we thought it might affect the poorer classes of persons or the matters pending in inferior courts. The same reason does not apply with regard to the enhancement from one rupee to one rupee eight annas where an application is made to a higher court or higher authority."

Rao Bahadur K. GOPALAKRISHNAYYA :—" I wish to know the views of other honourable members.

The Hon'ble the PRESIDENT :—" Order, order. It is not open to any honourable member to insist upon other honourable members speaking."

Rao Bahadur K. GOPALAKRISHNAYYA :—" I do not propose to withdraw my amendment, Sir. My only reason is that the enhancement would affect poor people largely. Moreover the rates derivable by the amending clause in the Bill would not be of any appreciable amount. So I press my motion for the acceptance of the House."

The Hon'ble Sir CHARLES TODHUNTER :—" Having fulfilled the functions of a chief controlling Revenue authority in the Board of Revenue, may I say that it is very very rare that these petitions are from poor persons. The petitions are largely from wealthy merchants who are affected by customs duties or something of the sort. I do not think they can demur to paying one rupee eight annas for taking up the valuable time of the Board of Revenue."

The amendment was then put and lost.

14th March 1922]

SCHEDULE II, ARTICLE 10.

Amendment 47.

MR. T. ARUMAINATHA PILLAI :—"Sir, I beg leave of the House to move the amendment standing in the name of Mr. T. C. Srinivasa Ayyangar."

The motion for leave to move was put and assented to.

MR. T. ARUMAINATHA PILLAI :—"I beg to move the amendment standing in the name of my honourable friend Mr. Srinivasa Ayyangar—

47. *In column 1 omit the word 'or', insert a comma between 'Mukhtarnama' and 'Vakalatnama' and add the words 'or any papers signed by an Advocate signifying or intimating that he is retained for a party' after the word 'Vakalatnama'.*

"The Bill as it is fixes a fee of one rupee for a mukhtarnama or vakalatnama when presented for the conduct of any one case to any Civil or Criminal Court other than a High Court or to any Revenue Court, or to any Collector or Magistrate or other executive officer, except those mentioned in clauses (b) and (c) of this number, a fee of one rupee eight annas when the same is presented to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a division, not being the Chief Revenue or Executive Authority, and a fee of three rupees when the same is presented to a High Court, Chief Commissioner, Board of Revenue or other Chief Controlling Revenue or Executive Authority. In these cases, I believe I will be gladdening the hearts of the Hon'ble the Finance Member when I want to include the advocates also when they file an entrance, for what is called a retainer. The barristers also should be required to pay the same rate. Somehow or other, Sir, it is curious that while the practitioners have got except by name a sort of seniority while they do the same sort of work one set of practitioners is allowed to appear without paying any sum for their entrance, another set of practitioners are bound to pay a vakalat stamp duty. A counsel or an advocate when he appears on the appellate side or on any original side in the mufassal has got to act as much as a vakil or an attorney and when a vakil or an attorney appears either on the appellate side from decrees or orders from the mufassal courts and when he appears before the mufassal courts, he has got to pay a stamp duty according to the various rates. But when a counsel appears one does not see any reason why he alone should be exempted. It is true, Sir, so far as the Presidency Small Cause Court is concerned that the difference is not at all observed because no practitioner there pays a stamp duty as well as on the original side of the High Court. It is only in the large number of suits that come up in the mufassal and also in the appeals that this distinction is observed. There is no justification for this distinction and as it has been reiterated from time to time by the Hon'ble the Law Member and the Hon'ble the Finance Member, people ought to pay for the increase of the revenues of the Presidency, I think, Sir, this is an item which nobody would feel for to pay. Hence if any item could be increased without any difficulty at all, it is this and I press the amendment for acceptance."

MR. A. RAMASWAMI MUDALIVAR :—"I beg to second this amendment, Sir. It is within the knowledge of every vakil practising in the High Court that in many of these cases, especially where batch suits are filed, a barrister or an advocate is engaged just to escape the fee on the vakalat and a senior

[Mr. A. Ramawami Mudaliyar]

[14th March 1922]

Schedule II, Article 10—*cont.*

vakil is engaged to argue the case. Especially in the appellate side where the rule of the original side does not obtain, by which both sets of practitioners may not be engaged at the same time, this rule is conveniently used to cheat the Government of its revenue. In a batch of cases for instance where the appeals filed by a tenant against the landlord number from 400 to 500, a barrister is engaged to file all these appeals at a nominal fee, thus saving about 800 to 900 rupees to the tenant by way of court fees and a senior vakil is engaged just in one case filing a vakalatnama in the first or the main case and the senior vakil is asked to argue the case. I think therefore it is very necessary that both advocates and barristers on the one hand, and vakils on the other, should be placed on the same level with regard to this matter. I therefore strongly support the amendment."

Diwan Bahadur M. KRISHNAN NAYAR :—"I have also very great pleasure in supporting the motion. I understood my honourable friend Mr. Ramaswami Mudaliyar to say that practically there should be no distinction at any rate in the appellate side in arguing cases between advocates and barristers on the one hand, and vakils on the other. I am prepared to support all the remarks of the mover of this amendment and of Mr. Ramaswami Mudaliyar, retaining at the same time the privileges which the barristers now enjoy. I do not want to deprive them of the privileges that they now have. As a matter of fact, vakils can appear in court only after presenting a vakalatnama. Even if this amendment is accepted it does not become obligatory on barristers to file vakalats and they can still appear without vakalats. Only they have to pay the fee fixed. So that, the amendment is intended to serve a monetary purpose without depriving the privileges enjoyed by the barristers. It is only in fiscal matters that the amendment will touch the barristers. They have no reason, therefore, to complain, and I trust my advocate friends here and outside this House will themselves have no objection to the acceptance of the amendment.

Mr. P. VENKATASUBBA RAO :—"I beg leave to oppose the amendment. Mr. Krishnan Nayar in supporting it said that it did not deprive the barristers of their privileges. It does, Sir. There is some distinction made between a vakalatnama in the case of a vakil, and the appearance memorandum in the case of a barrister. The vakalatnama is a declaration by the party and hence the client pays the fee thereon. But the memorandum of appearance in the case of a barrister or an advocate is different and the barrister may himself have to pay the fees prescribed for it. Moreover, the position will be anomalous, if you take the position of lawyers in criminal courts. The vakil will not be obliged to file a vakalatnama and will not have to pay anything, whereas the advocate who enters his appearance will be obliged to pay. I hope that it is not the intention of the House to place the barristers under a disability while depriving them of their privileges which they had long been enjoying. This is not equalization. I hope therefore that the House will reject the amendment."

The Hon'ble Sir CHARLES TODHUNTER :—"May I again appeal, Sir, to my experience which entirely confirms that of Mr. Ramaswami Mudaliyar as regards the signing of batches of cases of appeal memoranda by barristers for vakils? When I was Registrar of the High Court, it was very extensively done, and I tried every device

4th March 1922]

[Sir Charles Todhunter]

Schedule II, Article 10—*cont.*

I could to secure the Government revenue against this practice. For instance, I began by posting a batch upside down (Laughter). In that particular case the first of the batch was signed by the vakil and the rest by the barrister. I posted the last first, and the barrister was called upon to appear. But then I think the vakil appeared for him and said that he was ill. In another case the same thing happened and I think the Court called for a medical certificate. I see from the fact that the practice is still referred to as common, that I have been defeated, and that although the Court made rules to stop this practice, the practice is still going on. I feel sure, Sir, that as it is a practice which can only affect briefless barristers, there is nobody in this Council who would wish to support it."

MR. S. SOMASUNDARAM PILLAI:—"Mr. President, 'vakil' is an Hindustani word, meaning an agent or an attorney, and 'advocate' is an English word whose duty it is simply to advocate a case and not to be an agent of the client. Here in the Madras city, somehow or other, the duties of an advocate and an attorney are united in the vakil. So as attorney, he receives vakalatnama, which again is an Hindustani word meaning power of attorney. So such kind of vakil is obliged to receive vakalat from his clients. On the other hand, the advocate is doing the actual duty of advocating his client's case before the judge, and in the Original side his duty is merely to receive his brief and fees from an attorney. So I do not think there is any reason for asking the advocate to pay for the vakalatnama, because he is not at all agent to the client. With these few words I strongly oppose the amendment proposed."

MR. O. TANIKACHALA CHETTIYAR:—"Sir, I feel compelled to oppose this amendment. Now anything that brings on revenue is welcome to the Hon'ble the Finance Member, but so far as the privilege of the counsel and of barristers is concerned, it is a matter of tradition and of history, and I do not think that even for the purpose of raising revenue we shall be justified in taking away such little privileges as they enjoy without specific notice to them. One other thing is this—a barrister or advocate is exempt at present from paying a fee for a vakalatnama, and now why should the advocate alone be asked to pay a stamp on a memorandum of appearance? Vakalat and muktarnama both imply a paper which is signed by the client. In the case of an advocate, he does not take a paper from the client, but he merely signs and signifies to the court that he has been retained by the client, not by a retainer signed by the client. My friend who has moved the amendment, or the gentleman who has given notice of it, has not noticed that this amendment is affecting only one class of people, the advocates, to their prejudice, whereas such a restraint is not put upon the other class of practitioners, viz., the pleaders and the High Court vakils. In criminal courts every pleader, every High Court vakil, every advocate who appears, is required to enter a memorandum of appearance, but my friend has excluded the other classes of pleaders, and has only put in the advocate as the person who is required to affix a stamp on his memorandum of appearance. If, on the other hand, he had said that every lawyer entering a memorandum of appearance, whether in a civil or a criminal court, must do the same, I could understand it. Whereas, while you are seeking to take away the privilege of the barrister, you are exempting the other class of lawyers, viz., vakils and

[Mr. O. Tanikachala Chettiyar] [14th March 1929]

Schedule II, Article 10—*cont.*

pleaders. Therefore I do think that it is not right to inflict such a hardship on advocates and barristers. On these grounds and on the ground that you ought not to meddle with the power and status of an advocate without assigning reasons, I oppose this amendment."

Mr. ABBAS ALI KHAN:—"Mr. President, the number of barristers and advocates is very, very small. It comes to only about 120 or so. There are great disabilities and disadvantages in the case of these barristers. We are no longer retained by the client; we are simply advocates paid by honorarium. We cannot sue for our fees and many of the barristers also know that thousands of rupees are owing to them by their clients. They cannot go to court; neither could the clients sue the barristers in case they fail to appear for their client after having received a fee. So, it is a historic privilege of the barristers, and I do not think that this Council consisting of a majority of vakils ought to deprive the barristers of the only proud privilege they have been enjoying from very ancient times.

"As regards the other question of suits being filed by briefless barristers, it was the practice at one time in the seventies and eighties. Now I understand the system is fast changing, and instances of the nature mentioned by Hon'ble the Finance Member are very very rare, and if they are common, surely they are reprehensible. I am sure the discussion of this Council will be brought to the notice of the barristers, and those who are briefless will take advantage of this, and I am sure there will be no more of such cases hereafter. Moreover, the revenue that is likely to be derived from this is also very very small, and I think in the interest of harmony it is necessary that this motion should be dropped."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU:—"Mr. President, this question of the equalization of the privileges of barristers and vakils is not a new one. Perhaps I may inform the Council that on a recent occasion this question was considered by a committee in England. Many of the students there studying urged that one of the main grounds why there was such a large influx of students to England was on account of the disparity of the privileges which existed between the barristers and vakils. The question was also examined by more than one committee. For example, I remember particularly that Sir John Edge, Chief Judge of Allahabad, was very strongly for equalizing the privileges of barristers and vakils and he put forward the proposals to a committee appointed by the India Office."

Mr. P. VENKATASUBBA RAO:—"May I know, Sir, whether he means to say that the opinion of the Advocates' Association was to equalize these privileges?"

Diwan Bahadur M. RAMACHANDRA RAO PANTULU:—"I do not know what my friend is referring to. If he means the Advocates' Association in England, I do not refer to that. I can tell you that that Committee had before them all the best representatives of the students, and various other interests also were heard. I do not wish to refer to the findings of that Committee, but I may inform the House that there was a very strong feeling that these privileges of barristers and vakils should be equalised. The character of the Vakil bar in India justifies their being put on a footing of equality, and there is absolutely no reason why one set of legal practitioners should enjoy privileges which are denied to other sets.

14th March 1922] [Mr. M. Ramachandra Rao Pantulu]

Schedule II, Article 10—*cont.*

“That is on the general question. The present proposal is that they should be placed exactly on the same footing with reference to entering appearance in suits, and I do not understand how my honourable friends who are barristers are in any way affected. I believe the half a rupee or one rupee which is charged for entering appearance comes out of the pocket of the client, and I do not see why my honourable friends are so much alarmed at this comparatively innocent proposal. The general question of privileges will have to be dealt with later on, and I am certain that this question is attracting attention already. Honourable members are aware that this question of exempting vakils also from filing vakalatats has attracted some attention in the Legislative Assembly and the question, so far as I remember, was referred to Local Governments and the High Courts. The present proposal places pleaders, vakils and barristers on the same footing with reference to entering appearance in cases. Therefore, I do not see why my honourable friends believe that in this proposal they see an attempt to deprive them of a privilege which they have got. Of course, they have the privilege of not being sued; and that is not affected by this. And if any of my honourable friends are not able to recover his fees, that particular privilege also will be there. Therefore, I do not see how my honourable friends are entitled to object to the proposal as put forward.”

Rao Bahadur K. GOPALAKRISHNAYYA:—“Sir, I wish to support this amendment. Probably it might be of some advantage to the Council if I were to give some experience which I have gathered. In batches of suits and execution applications, these barristers are sometimes engaged in order to evade payment of half a rupee for a vakalatnama. I know that in a Court where there were thousands of applications for execution of decrees on behalf of an estate, the estate engaged a barrister in order to avoid the payment of the vakalatnama fee, so that that half a rupee for each vakalatnama might serve as a fee for the barrister. I think there are two or three other instances also. The fact that fees are ordered to be paid by them on their memorandum of appearance does not take away the privileges which they enjoy. No question of privileges can arise now, and as my friend Mr. Ramachandra Rao has pointed out, any injury to those privileges may be considered elsewhere separately. But so far as taxation is concerned, the filing of a memorandum of appearance is the same as the filing of a vakalatnama on behalf of the client. Though the client engages a vakil in a particular form, it is the same as a barrister being engaged by means of filing a memorandum of appearance which certainly would mean that he received instructions from the client. Sometimes the barristers receive direct instructions, but sometimes through some middleman, not directly from the client, so as to keep alive an abandoned cause. These middlemen give instructions merely for prolonging a case. These are some of my experiences. It does not mean that I am insinuating any of my friends here or elsewhere. The only thing is we are guided by certain principles when we consider a question of taxation of this sort and without meaning anything by way of insinuation to my barrister friends, I think they must enjoy the same privilege of being taxed at eight annas or one rupee, as the case may be, along with their other brothers in the profession. With these remarks, I support the amendment.”

[14th March 1922]

Schedule II, Article 10—*cont.*

1-30 p.m. Mr. C. P. RAMASWAMI AYYAR :—“I am afraid there is a certain amount of misconception in this matter. In so far as a barrister follows the traditions of the English barrister he has to be instructed by attorneys duly constituted for the purpose as on the original side or in England. The attorney enters an appearance and has to pay for the appearance so entered by him and in theory the barrister is not instructed by the client—by the lay client directly—but is instructed by the attorney who is his professional client. He does not enter appearance in the sense in which the word is sought to be used in the amendment. He merely appears and that is the privilege of the barrister.”

Mr. O. TANIKACHALA CHETTIYAR :—“May I know if there is no stamp duty for the attorney's appearance?”

Mr. C. P. RAMASWAMI AYYAR :—“As Mr. Arumainatha Pillai pointed out, on the original side there is no stamp; there is also no stamp for the vakils. I am only making my observations with regard to the traditions of the barrister. This Act is not concerned with the original side and we are not dealing with it. My remarks apply generally to the barristers. Though, no doubt, in abstract theory of law there is nothing to prevent a barrister taking instructions directly from the clients, yet by a kind of professional tradition which has sprung up and has been maintained for the last 150 years, it has been considered a regular and proper thing for a barrister not to appear without the intervention of a solicitor except in certain classes of criminal cases. If that were the tradition followed here, if that were the system adopted here, I think we can understand the same privilege and the same dignity and the exemptions being pleaded for. But it is perfectly true and anyone who has had an experience of the appellate side and the batches of appeals on the appellate side knows that the barrister—I do not blame anybody—serves the functions of an attorney as well as of counsel. And what he really does is that he acts as a person by reason of whose entry of appearance no fee is payable in respect of the presentation of a large number of appeals, and when a vakil enters appearance in one appeal, there are 1,500 other appeals in which the barrister enters only a memorandum of appearance. The vakil argues the appeals and the barrister often does not. The question is whether the barrister is entitled to privileges as such if he does not conform to the strict traditions of the profession. If he does so—the root idea underlying the practice is an excellent idea, the idea underlying being a double agency—if that is sought to be carried out in practice, I can well understand the plea for the barristers which is being made in this Council.”

Mr. T. ARUMAINATHA PILLAI :—“My friend Mr. Somasundaram Pillai rather fell into a serious misapprehension. I believe he entirely forgot the matter, not willingly I believe. He stated that the barristers had only to plead and advocate the cause of the clients and the vakils because they derived their name from the Arabic language acted as agents. My friend knows that on the appellate side, when appeals come from the mufassal courts, the advocates do also act. So far as acting on the appellate side is concerned, they file the memorandum of appeal, point out portions for translation and printing in the High Court, they pay into the court the charges for translation and purchase the papers through their clerks just as vakils do, and they do all this work without being instructed or assisted by an agency.

14th March 1922]

[Mr. T. Arumainatha Pillai]

Schedule II, Article 10—*cont.*

That is the position in which we are now in the appellate side in respect of cases coming from the mufassal. As far as the original court is concerned, the advocates have to do the same work just as vakils practising in the mufassal courts do. They file the statement, they appear at the framing of the issues and do everything just as a vakil does. So far as the original side of the High Court is concerned, Mr. Tanikachalam Chettiyar has confused the issues. In the original side when the attorneys or the barristers file their appearance, they have not got to pay any stamp duty. As the Advocate-General has explained, when the barristers appear in the original side of the High Court, they are entitled to appear and they say 'I appear for so and so instructed by so and so'. If that position is maintained throughout, then it will be very good. But when that position is not maintained and when they come to court and do all the work that the vakils do, one does not see any reason why they should not be made to pay. As Mr. Ramachandra Rao pointed out, it is not the barrister that pays for all these things. It is the client that after all pays for these things. One does not see why the coffers of the Government should not be filled in this way. One thing also my friend Mr. Tanikachalam Chettiyar said. He said that so far as criminal cases were concerned, the barristers and the vakils also entered their memorandum of appearance. The advocates also do the same. It is perfectly right. In either case the parties are not made to pay any stamp duty at all. So far as the difference between the vakil and the advocate is concerned, unless, as my friend the Hon'ble the Advocate-General has put it, they are going to extend the position of the dual system of attorney and barrister, there is no use of maintaining this difference here. There is no use of saying that after all we are practising the tradition of the English bar and therefore our clients shall not be mulcted. I do not want to refer to the practice prevailing in the appellate side referred to by Mr. A. Ramaswami Mudaliyar and the Hon'ble Sir Charles Todhunter. I am sorry to say that that practice is not a thing of the past. It is prevalent even to-day. If the client gets the profit and the Government loses the same, it is entirely due to this. Under these circumstances, I do not see any reason why the Government treasury should be emptied in this manner. I press my amendment and leave it to take its fate in the House."

A poll was taken with the following result :—

Ayes.

- | | |
|--|---|
| 1. The Hon'ble Sir Lionel Davidson. | 15. Mr. B. P. Devarajulu Nayudu. |
| 2. The Hon'ble Sir Charles Todhunter. | 16. Rao Bahadur K. Gopalakrishnayya. |
| 3. The Hon'ble Khan Bahadur Muhammad Habib-ul-lah Sahib Bahadur. | 17. Rao Bahadur A. Ramayya Panja. |
| 4. The Hon'ble Mr. K. Srinivasa Ayyangar. | 18. Mr. K. Sitarama Reddi. |
| 5. The Hon'ble Mr. P. Ramarayaningar. | 19. Diwan Bahadur M. Ramachandra Rao Pantulu. |
| 6. Mr. C. P. Ramaswami Ayyar. | 20. Diwan Bahadur M. Krishnan Nayar. |
| 7. Mr. T. E. Moir. | 21. Rao Bahadur A. S. Krishna Rao Pantulu. |
| 8. Mr. F. J. Richards. | 22. Mr. S. Muttumanioka Achari. |
| 9. Mr. C. W. E. Cotton. | 23. Rai Bahadur T. M. Narasimhacharlu. |
| 10. Mr. R. Littlehailes. | 24. Rao Bahadur Dr. C. B. Rama Rao. |
| 11. Mr. E. Periyamayagam. | 25. Mr. A. Ranganatha Mudaliyar. |
| 12. Mr. A. Ramaswami Mudaliyar. | 26. Mr. M. Suryanarayana Pantulu. |
| 13. Mr. K. Adinarayana Reddi. | 27. Mr. T. Arumainatha Pillai. |
| 14. Mr. R. Appaswami Nayudu. | 28. Rao Sahib E. C. M. Mascarenhas. |
| | 29. Mr. G. Vandanam. |

[14th March 1922]

Schedule II, Article 10—*cont.**Noes.*

- | | |
|--|--|
| 1. Mr. S. T. Shanmukham Pillai. | 10. Mr. N. A. V. Somasundaram Pillai. |
| 2. Mr. C. Ramalinga Reddi. | 11. Mr. S. Somasundaram Pillai. |
| 3. Mr. O. Tanikachala Chettiayar. | 12. Dr. P. Subbarayan. |
| 4. Mr. J. Kuppuswami. | 13. Mr. T. C. Tangavelu Pillai. |
| 5. Mr. B. Muniswami Nayudu. | 14. Mr. P. Venkatasubba Rao. |
| 6. Mr. M. Narayanaswami Reddi. | 15. Mr. C. V. Venkataramana Ayyangar. |
| 7. Mr. C. Natesa Mudaliyar. | 16. Rao Bahadur C. V. S. Narasimha Raju. |
| 8. Mr. P. T. Rajan. | 17. Mr. Abbas Ali Khan. |
| 9. Mr. W. P. A. Saundara Pandia Nadar. | 18. Mr. Ahmad Miran Sahib. |

The amendment was carried, 29 voting for and 18 against it.

Amendments 48 to 50.

The following amendment was deemed to have been withdrawn as Rao Bahadur K. Gopalakrishnayya did not move it:—

48. (i) *In column 3 for the words 'one rupee' against item (a) substitute 'Eight annas'.*

(ii) *In the same column for the words 'one rupee eight annas' against item (b), substitute 'one rupee'.*

(iii) *In the same column for the words 'Three rupees' against item (c) substitute 'Two rupees'.*

The following amendment was deemed to have been withdrawn as Rao Bahadur A. S. Krishna Rao did not move the same:—

49. (i) *In column 3 against item (a) substitute 'Twelve annas' for 'One rupee'.*

(ii) *In the same column against item (c) substitute 'two rupees' for 'three rupees'.*

The following amendment was deemed to have been withdrawn as Mr. T. Arumainatham Pillai did not move the same:—

50. *Under the column 'Proper fee' against item (b) omit the word 'Two' and substitute the word 'Ten'.*

Amendment 51.

Rao Bahadur K. Gopalakrishnayya moved—

51. *In column 3 for the words 'Fifteen rupees' against items (i) and (ii) substitute 'ten rupees'.*

Mr. B. P. Devarajulu Nayudu seconded the motion.

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"I object to it. Even if it is Rs. 15 it is not really an adequate fee in the vast majority of cases. It was originally Rs. 10. I have made a moderate increase of 50 per cent. The class of suits referred to are to alter or set aside the summary decision or order of any civil court not established by Letters Patent. This setting aside really involves the investigation into title in a vast majority of cases. By means of a suit of this sort and by paying Rs. 15 the litigant is in a position to establish his title and he also gets a release from the liabilities to which his property is subject. In many cases this ought to be taxed as if it were a suit for possession. There is really no justification for having it as ten rupees.

Rao Bahadur K. GOPALAKRISHNAYYA:—"I withdraw my amendment."

The motion was by leave withdrawn.

14th March 1922]

SCHEDULE II, ARTICLE 17.

Amendment 52.

Mr. N. A. V. SOMASUNDARAM PILLAI :—" Sir, I beg to move—

1-45 p.m. 52. *In the third column against item (iii) omit the word 'fifty' and substitute 'twenty.'*

" This relates to suits under section 14 of the Religious Endowments Act or under section 91 or 92 of the Code of Civil Procedure, 1908. The reason why I submit that a fee of Rs. 20 instead of Rs. 50 will be enough is this. Generally, suits under section 14 of the Religious Endowments Act or under section 91 or 92 of the Code of Civil Procedure relate to some religious endowments or other charitable institutions. In such cases if a large court-fee is fixed, it will stop a number of suits which would otherwise be necessary to be instituted for the benefit of a religious endowment or other charitable institution. After all, suits under these sections are only few in number and it will not be necessary to tax very heavily those bodies or persons who, when they find that there is anything wrong with the institutions want, to set matters right. They must be encouraged to come forward and place the matter before the court, so that any irregularity or mismanagement or misfeasance may be rectified. In such cases, I submit, it is necessary that there should be an encouragement by making the court-fee very low. I submit that the rate of Rs. 50 that is now recommended by the Select Committee is very high. In the original Bill, as drafted by the Hon'ble the Law Member, he was pleased to take into consideration all these circumstances and he recommended only Rs. 20. But the Select Committee has raised it to Rs. 50. I therefore submit that it ought to be reduced to Rs. 20, the original figure put forward by the Hon'ble the Law Member, in view of the difficulties and other circumstances connected with the suits of such a nature as are mentioned in article 17."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Sir, I beg to second this amendment and, in doing so, I wish to confirm the object the Hon'ble the Law Member had when he originally introduced the Bill. He must have originally taken into consideration all the circumstances attendant upon the institution of suits relating to religious endowments or other charitable institutions, when he fixed the rate of Rs. 20. I am not in a position to comprehend any reason which must have led the Select Committee to substitute Rs. 50 for Rs. 20. I think that it must be the object of this Council to give all possible facilities in the matter of institution of suits relating to charitable trusts. The effect of increasing the fee in such cases is to discourage the filing of such suits. For these reasons, I request that the original object of the Hon'ble the Law Member should be carefully borne in mind and that we should go back to the old rate as introduced in the original Bill."

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—" I confess I made many mistakes in introducing this Bill. But that is no reason why the unanimous recommendation of the Select Committee should not now be adopted. Members of this House, who are lawyers, know that in almost every one of these cases very difficult questions come up for consideration and they absorb a very large amount of the time of the courts, mostly the superior courts, and the fee which is paid is really ridiculous. If there is an honest claim, then the trust will not be a loser even if it pays Rs. 100. It does not pay enough

[Mr. K. Srinivasa Ayyangar.]

[14th March 1922]

Schedule II, Article 17—*cont.*

for the benefit it derives. If it is a dishonest suit, then the person who brings that suit will have to pay and I think he must pay for his dishonesty. If the suit succeeds, the defendant has to pay the costs.

“Again in suits of this nature, there are innumerable applications almost under every section of the Civil Procedure Code and applications are put in at every stage to obstruct the course of such suits. If there is to be any change, I think it ought to be Rs. 150 and not Rs. 50. After all, the number of suits which are filed under these sections is very small—about 67—and the quantity of time they take of the superior courts is very considerable. They take more time than any other kind of suits.”

Mr. N. A. V. SOMASUNDARAM PILLAI:—“I think that the amount of time taken by the court from the time of the institution of the suit is not the criterion for fixing the amount of court-fee to be paid. For, as a matter of fact, we see in money suits covering lakhs of rupees, a large amount of court-fee is paid and sometimes the suits are decided *ex parte*. There is absolutely no proportion whatever between the amount of fees paid in such suits and the kind of work involved in the disposal of those suits. At any rate, in regard to these charitable endowments or public or religious endowments, some exception ought to be made. It is for the purpose of seeing that these religious institutions are properly managed according to the wishes of the donors that the rate should not be increased. If there is no such concession, such suits will be very rare and the result will be that these religious endowments or other public institutions will not be cared for by anybody. This will be a great loss to the country and to the people. In fixing the court-fee, even if we fix Rs. 500 as the court-fee payable in some of these cases, it will not be a sufficient remuneration for the time and intelligence they take in their disposal. We are not always fixing the court-fees with respect to the amount of time or the intelligence that is to be given for the disposal of the suits or to the number of applications that may be put under each and every one of the sections of the Civil Procedure Code. That is no criterion at all. We ought to make special exception with regard to suits of this nature. I therefore submit that, instead of Rs. 50, Rs. 20 may be fixed as the fee payable on these suits.”

The motion was put and lost.

Amendments 53 and 54.

The following amendments being identical fell out from the agenda:—

Mr. P. SIVA RAO:—

53. *Against item (iii) in the third column for ‘Fifty rupees’ substitute ‘Twenty rupees’.*

Rao Bahadur A. S. KRISHNA RAO PANTULU:—

54. *In column 3 against item (iii) substitute ‘Twenty’ for ‘Fifty’.*

SCHEDULE II, ARTICLE 17-A.

Amendment 55.

The following amendment was not moved and was therefore deemed to have been withdrawn:—

Rao Bahadur A. S. KRISHNA RAO PANTULU:—

55. *In column 3 substitute ‘Two hundred rupees’ for ‘Five hundred rupees.’*

14th March 1922]

Schedule II, Article 17-A—*cont.*

Amendment 56.

The following amendment was deemed to have been withdrawn, the member being absent :—

Mr. P. SIVA RAO :—

56. *In the third column under the heading 'proper fee' substitute 'two hundred and fifty rupees' for 'five hundred rupees'.*

Amendment 57.

Mr. N. A. V. SOMASUNDARAM PILLAI :—“ Sir, I beg to move—

“ 57. *In the third column omit the words “ five hundred ” and substitute ‘ Two hundred .’* ”

“ This relates to article 17-A —

Plaint or memorandum of appeal in a suit—

(i) to obtain a declaratory decree where no consequential relief is prayed ;

(ii) to set aside an award ;

(iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.

“ With regard to such suits we have been hitherto paying only Rs. 10 as the court fee. But now the present Bill says that if it is a suit presented in a District Munsif's Court or the City Civil Court, the fee is Rs. 15 ; but if it is presented to a District Court or a Sub-Court, there are two classifications. They say it ought to be Rs. 100 if the value for purposes of jurisdiction is less than ten thousand rupees and five hundred rupees, if such value is ten thousand rupees or upwards. What I propose in this amendment is to substitute Rs. 200 for Rs. 500. There is absolutely no proportion whatsoever with regard to suits below Rs. 10,000 and those above Rs. 10,000. If it is Rs. 9,999 the court fee is Rs. 100 but if it is Rs. 10,000, it is Rs. 500. There is absolutely no reason at all why there should be such difference. There is Rs. 15, Rs. 100 and Rs. 500. I do not take objection to the two rates, Rs. 15 and Rs. 100. But I think that the fee of Rs. 500 may reasonably be reduced to Rs. 200. If there is some proportion, I can understand. But to say that all suits of the value of Rs. 10,000 and upwards are liable to a court fee of Rs. 500 is quite unreasonable. It will work a great hardship on the litigants. Rupees 200 will be enough. In the first case the parties will be already in possession. No consequential relief is prayed. Only a declaration has to be given. Again suppose there is an adoption and some relation who is interested in the matter sets up that there is no adoption. In order to avoid future complications a declaration has to be obtained at once, when the witnesses are alive and when the documents are in existence at the hands of the court as to the validity of the adoption. Again there are sometimes cases in which awards are obtained. In such cases necessity may arise for having the award set aside at the particular time. To say that in such cases a fee of Rs. 500 is to be paid is quite unreasonable. It is not only unreasonable but unwarranted, whatever may be the extent to which our deficit may have gone. No doubt we have agreed to raise the court-fees in order to meet the deficit. But there must be some reason for the enhancement. To put a court-fee of Rs. 500 in these cases, I must submit, with due deference to the Hon'ble the Law Member and other persons who might have had a hand in drafting this Bill, is very excessive.”

[14th March 1922]

Schedule II, Article 17-A—*cont.*

Mr. M. SURYANARAYANA PANTULU :—“ I second it.”

The Hon'ble Mr. K. SRINIVASA AYYANGAR :—“ Sir, I am glad to note
2 p.m. that the amendment given by my honourable friend Mr. Gopalakrishnayya is really far more satisfactory than the one I have put in. He has made proposals to enable us to levy court fees up to Rs. 1,000 where the value exceeds Rs. 20,000. It is no doubt true that the classes of suits dealt with here require only a court fee of Rs. 10. It is not merely a question of filling the exchequer, but the question is whether persons who can agitate these matters of whatever value should be left off with a fee of Rs. 10 only. Is it logical that a person who files a suit for Rs. 500 or Rs. 1,000 should be required to pay much more court-fees than a person who brings a suit to obtain a declaratory decree in respect of property with lakhs or who brings a suit to set aside an award which imposes a liability upon him to the extent of lakhs or who brings a suit to set aside an adoption which may involve the inheritance to property which may be worth lakhs? We have tried to put them all on the same footing, and have imposed such a reasonable duty. Ordinarily speaking in all these cases an *ad valorem* fee is proper, just as the fees for vakils are calculated even in these cases on an *ad valorem* basis. But we do not want to increase the duty all on a sudden and therefore this scheme has been adopted. If the suit is filed in a District Munsif's Court whose jurisdiction would be up to Rs. 3,000, the fee is Rs. 15; but if the suit is filed in a higher court, like the subordinate judge's court with unlimited jurisdiction—limited so far as appeal is concerned to Rs. 5,000—we are imposing a duty of Rs. 100. But if the suit is valued at above Rs. 10,000 so as to enable the party to go to the Privy Council, then we start with a fee of Rs. 500. That is the scheme which has been proposed in the Bill. There has been other gradations proposed by other honourable members like Mr. Gopalakrishnayya which improve upon the device which I have made for charging these cases. There is no hardship whatsoever because it must be remembered that this fee of Rs. 500 is for Rs. 10,000 and above. This Rs. 500 fee will be the fee that has to be paid whatever the value may be whether it is Rs. 20,000 or Rs. 1,00,000 or multiples of lakhs. Under these circumstances, I submit, Sir, there is no justification whatsoever to diminish the scale which I have proposed.”

Mr. N. A. V. SOMASUNDARAM PILLAI :—“ What the Hon'ble the Law Member says is that there may be gradations in the scale of court-fees as proposed by my honourable friend Mr. Gopalakrishnayya—.”

The Hon'ble the PRESIDENT :—“ The honourable member should confine himself to the amendment before the House. The amendment of the honourable member Mr. Gopalakrishnayya has not yet been moved and so no discussion can turn upon the same.”

Mr. N. A. V. SOMASUNDARAM PILLAI :—“ I only submit, Sir, that the motion that I have made is a very reasonable one and there is no reason why the fee should be raised to Rs. 500. I therefore submit that the fee should be reduced.”

The amendment was put to the vote and lost.

The Council adjourned for lunch at 2-5 p.m. and re-assembled at 2-50 p.m.

14th March 1922]

Schedule II, Article 17-A—*cont.*

Amendment 58.

The following amendment standing in the name of Rao Bahadur K. Gopalakrishnayya was not moved and was therefore deemed to have been withdrawn:—

58! In column 3 for all the words beginning with 'hundred rupees' and ending with 'upwards' substitute the following:—

"Hundred rupees, if the value for purposes of jurisdiction is five thousand rupees and below ;

two hundred and fifty rupees, if such value exceeds five thousand rupees, but does not exceed ten thousand rupees ;

five hundred rupees, if such value exceeds ten thousand rupees but does not exceed twenty thousand rupees ; one thousand rupees, if such value exceeds twenty thousand rupees."

SCHEDULE II, ARTICLES 17-B, 18 AND 19.

Amendments 59 and 60.

The following amendments standing in the name of Mr. Siva Rao were not moved owing to the absence of the honourable member and were therefore deemed to have been withdrawn:—

59. In the third column under 'proper fee' omit 'ten rupees', 'fifteen rupees' and 'one hundred rupees' and substitute 'fifteen rupees' and omit all the words in the second column altogether.

60. In the third column omit 'one hundred rupees' and in the second column omit all the words.

SCHEDULE II, ARTICLE 20.

Amendment 61.

The following amendment standing in the name of Rao Bahadur P. C. Etirajulu Nayudu was, owing to the absence of the honourable member, moved by Mr. G. Vandanam with the leave of the Council:—

Mr. G. VANDANAM:—"Sir, in the absence of the honourable member Rao Bahadur Etirajulu Nayudu I beg to move the following amendment which was proposed by him:—

'61. In column 3 instead of the word "twenty" insert "five".'

"Sir, Mr. Etirajulu Nayudu has proposed this amendment with a view to help the Indian Christian community especially the Protestant Christian community and not the Roman Catholic Christian community for they do not generally go to courts for divorce. In this case, it will be found that under the new Act no alteration has been made from the original one. Nevertheless this change is proposed by my honourable friend with a view to help the poor. It is true that this Act has been introduced to enhance the revenues of the country. While we get revenue on the one side, I think it is good on the part of the Government also to do some justice and render some help to the needy ones and the Indian Christians are really in need of such help. We all know that the Indian sentiment is generally against going to courts to get any divorce. And as a matter of fact courts make it

[Mr. G. Vandanam]

[14th March 1922]

Schedule II, Article 20—*cont.*

very difficult for the Indian Christians to get divorce. On account of the strictness of the court and on account of the heavy court-fees, many poor people are obliged to suffer owing to the faithlessness on the part of their partner in life. If a husband or wife lives in immoral condition, the husband or the wife has no way of going to courts on account of the heaviness of fees. The injured party therefore lives in a state of helplessness and in order to make divorce in such cases easy, this Council would do well to help those who seek remedy in courts. Moreover the revenue derived by the Government is very small from divorce cases, and if the amendment is accepted the relief granted to several suffering families would really be immense.

“I wish to bring to the notice of the Council another matter and it is this: these poor people would not go to courts unless either the missionaries or the church courts advise them to go to courts after due examination of their cases. Wherever possible the church court or the missionaries would try to settle the matter amicably without going to courts. They go to courts only when it becomes impossible for the church court or the missionaries to render any help. Therefore, I think the Hon'ble the Law Member will be doing a great act of charity to the suffering Christians if he accepts the amendment. The loss of revenue to the Government will be very small.”

Mr. C. V. VENKATARAMANA AYYANGAR :—“Sir, I have great pleasure in seconding this amendment. I think that, with a view to lessen illegitimacy, it is desirable that this amendment should be accepted. The revenue from such cases is after all very small and there will not be much loss of revenue by the acceptance of this amendment. If they are Hindus, I do not think there is anything to prevent the lower class of people to go and marry even when there is a wife or a husband. There is no question at all as to the legality or otherwise of such marriages. But under the Christian Law, difficulties arise among the lower classes of people. The practice now is for the wife to go and live wrongly with any man and thus get illegitimate offsprings. If the divorce is made more easy, then marriages can be made more legal. I think we will be really helping the poor class in establishing the legitimacy of their children. On this point, I think it is desirable that the Hon'ble the Law Member should accept this amendment. I am sure statistics of such divorce suits will be ready with the Hon'ble the Law Member and I do not think the number will reach even two digits. The loss in revenue to the Government will not be much. In any case we have passed several amendments enhancing the revenues of the Government under this Act and I think a small reduction in the revenue may be allowed by the Hon'ble the Law Member accepting this amendment.”

The Hon'ble Sir CHARLES TODHUNTER :—“The amount of revenue involved is not small though it is not very large. But what
3 p.m.
I should like to protest against is this fiscal measure being taken advantage of to make divorce cheaper. This is not a case in which we have enhanced the revenue at all. The purpose of the honourable mover's amendment is to facilitate the legitimatizing of irregular relations. Such a purpose should not be pursued through means of a fiscal measure. Therefore I oppose this amendment.”

14th March 1922] Schedule II, Article 20—*cont.*

Mr. G. VANDANAM:—"Going to court is not made cheaper by this, because the Indian Christians are not easily allowed to go to the court either by the church or by the missionaries. Moreover, we are not legalising illegal marriages; but we are only making it easier for people to divorce persons of known immoral character. It is only when the husband or wife lives in open adultery that the church or the missionary would allow the person affected to go to court. Even if a person knows that so-and-so leads a bad life, he would be willing to keep quiet for the sake of children already born, and it is only when it is known that the case is incorrigible that they go to court. This course is not legalising immoral marriages or illicit life. It only facilitates the wronged husband or wife to divorce the guilty party. Therefore I hope that the Finance Member will help the poor people by making this concession."

On the motion of Mr. G. Vandanam a poll was taken with the following result:—

Ayes.

- | | |
|--|---|
| 1. Mr. R. Appaswami Nayudu. | 5. Saiyid Diwan Abdul Razzaq Sahib Bahadur. |
| 2. Diwan Bahadur R. Venkataratnam Nayudu. | 6. Mr. L. C. Guruswami. |
| 3. Mr. C. V. Venkataramana Ayyangar. | 7. Mr. G. Vandanam. |
| 4. Munshi Muhammad Abdur-Rahman Sahib Bahadur. | 8. Rao Sahib P. Venkatarangayya. |

Noes.

- | | |
|--|---------------------------------------|
| 1. The Hon'ble Sir Lionel Davidson. | 7. Mr. C. P. Ramaswami Ayyar. |
| 2. " Sir Charles Todhunter. | 8. Mr. T. E. Moir. |
| 3. " Khan Bahadur Muhammad Habib-ul-Jah Sahib. | 9. Mr. F. J. Richards. |
| 4. " Mr. K. Srinivasa Ayyangar. | 10. Mr. C. W. E. Cotton. |
| 5. " Mr. P. Ramarayaningar. | 11. Mr. B. Littlehailes. |
| 6. " Rai Bahadur K. Venkata Reddi Nayudu. | 12. Mr. E. K. Shanmukham Chettiyar. |
| | 13. Mr. K. Adinarayana Reddi. |
| | 14. Mr. N. A. V. Somasundaram Pillai. |

The amendment was lost, 8 having voted *for* and 14 *against*.

CLAUSE 13.

Clause 13 as amended was then passed and added to the Bill.

PREAMBLE.

The preamble was then passed and added to the Bill.

The Hon'ble Mr. K. SRINIVASA AYYANGAR:—"I do not propose to move that the Bill be passed into law. I want to see carefully whether the language of the Bill as amended is right and if necessary to move consequential amendments. This is a taxation measure and a comma or a single word may affect the context. If you kindly put it in the agenda for to-morrow I will look into the matter and move that the Bill be passed into law then. I make this request to you because as I have not given any notice to the Secretary he cannot include this in the agenda for to-morrow. If it is not taken up to-morrow, it will have to wait till September."

The Hon'ble the PRESIDENT:—"I take it that it is the wish of the House to finish this Bill to-morrow. I will then put this in the agenda for to-morrow afternoon, subject of course to such objections as honourable members may take under the standing orders. I believe that the Government intend to make some supplementary demands for the current year."

The Hon'ble Sir CHARLES TODHUNTER:—"They have to be discussed by the Committee as the supplementary demands are practically the revised estimate. I have no objection to its coming on on the 17th instant."

[14th March 1922]

The Hon'ble the PRESIDENT:—"I had better explain to the House. The Government want to introduce a number of supplementary demands for grants and they propose to make them on the 17th. It is not really open to me to set down any work for the 17th. Nine days beginning from the 17th have been set apart by His Excellency the Governor, not the Government, for discussing the budget for 1922-23. That is my difficulty. If this work is taken up on that day it will reduce the period of 9 days set apart to deal with proposals for reductions and omissions of grants for 1922-23. Therefore I want to take this at an earlier date. I wish to know whether it would suit the Finance Member and the Government if I set it down for the day after to-morrow."

The Hon'ble Sir CHARLES TODHUNTER:—"We have a Cabinet meeting that day. May I ask whether the supplementary demands, which are really the revised estimate, do not form part of the budget?"

The Hon'ble the PRESIDENT:—"The House is entitled to the full use of the time allowed by His Excellency the Governor, namely, the period of 9 days, to make motions for the omission or reduction of grants for 1922-23. In the face of His Excellency the Governor's order, I cannot reduce that period. If the supplemental demands are not considered the day after to-morrow, they must lie over."

The Hon'ble Sir CHARLES TODHUNTER:—"Would it be possible to take them the day after to-morrow at 5 p.m.?"

The Hon'ble the PRESIDENT:—"5-30 is the usual hour for adjournment."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU:—"I do not know whether the Hon'ble the Finance Member wishes us to understand that the supplementary estimate for which he wants the sanction of the House is not covered by previous permission of the Council."

The Hon'ble the PRESIDENT:—"We really cannot anticipate the discussion on the supplementary grants till they appear on the notice paper. I think the obvious course will be to take them up day after to-morrow seeing that the Finance Committee will have dealt with these grants to-morrow. The notice has been given to the Secretary. I do not know if the discussion on the grants will take more than an hour; of course it depends on the honourable members who take part in the debate. It is presumably the wish of the honourable members to facilitate the work of the Government, but I do not see how it can be managed unless we devote a portion of day after to-morrow to this work."

The Hon'ble Sir CHARLES TODHUNTER:—"It would be better to leave it till the end of the budget discussion. There is no very great urgency. It is desirable that the Finance Committee should examine the supplementary demands before they are placed before the Council."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU:—"Is it not necessary to obtain the sanction of the Council before the end of the financial year?"

The Hon'ble the PRESIDENT:—"The 28th March will be all right for that purpose."